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ABSTRACT

A hearing was held by the Subcommittee on Environment, Energy, and Natural Resources on the Environmental Protection Agency's (EPA) implementation of laws regulating asbestos hazards in schools and in the air. Presented are testimony as well as letters and statements submitted for the record by leading authorities in the area including: (1) James J. Florio (New Jersey State Representative); (2) Donald E. Kirkendall (EPA Deputy Inspector General); (3) John A. Moore (EPA Assistant Administrator for Pesticides and Toxic Substances); (4) James R. Oglesby (National School Boards Association President-Elect); (5) Mike Synar (Oklahoma State Representative and chairman of the subcommittee); and (6) Bill Kitchen, III (member, Johnstown, New York, School Board). (SI)

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ED313777

EPA'S IMPLEMENTATION OF LAWS REGULATING ASBESTOS HAZARDS IN SCHOOLS AND IN THE AIR

HEARING

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

JUNE 1, 1988

Printed for the use of the Committee on Government Operations

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EPA'S IMPLEMENTATION OF LAWS REGULATING ASBESTOS HAZARDS IN SCHOOLS AND IN THE AIR

WEDNESDAY, JUNE 1, 1988

House of Representatives,
Environment, Energy,
and Natural Resources Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2203, Rayburn House Office Building, Hon. Mike Synar (chairman of the subcommittee) presiding.

Present: Representatives Mike Synar and Jon L. Kyl.

Also present: W. Donald Gray, staff director; Kathy Seddon, counsel; and Sheila Canavan, clerk.

OPENING STATEMENT OF CHAIRMAN SYNAR

Mr. Synar. The subcommittee will come to order. Today the subcommittee revisits the question: How effectively is the Environmental Protection Agency addressing hazards caused by asbestos?

Asbestos is one of the few known human carcinogens. It causes cancer and other serious disorders of the lung. It attacks quietly. The fibers in the air are often invisible to the naked eye, so an asbestos victim can be exposed and not know it. Asbestos-induced diseases have a long latency period. Not until 15 to 40 years later when the disease manifests itself does a victim realize he or she was exposed.

Despite the known hazards and pervasiveness of asbestos, to date, the Federal response has been to nibble away at pieces of the problem.

Of great concern has been the exposure of the most vulnerable segment of our population: children. There have been several statutory enactments aimed at reducing the exposure to school-age populations. Congress tried to facilitate abatement of asbestos in school buildings by establishing a loan and grant program for needy schools. However, the administration has opposed the use of Federal money for such activities and the program has never been adequately funded.

The most recent legislation was enacted in 1986, the Asbestos Hazardous Emergency Response Act or AHERA. It was a response to the failure of existing notification requirements to reduce asbestos hazards to our Nation's schools. The new law requires identification of asbestos containing materials in school buildings, development of management plans to address asbestos hazards in school buildings, and the implementation of the response actions. October 1988 and July 1989 are key dates in the implementation of that law. We want to find out today if EPA is prepared to ensure successful compliance with the law.

EPA has also issued a national emission standard for hazardous air pollutants for asbestos under the Clean Air Act. The rule, which was designed to protect all of us from undue exposure to airborne asbestos, requires notification and safe removal of asbestos when buildings are being demolished or renovated. If the required amount of asbestos is involved, abatement activities at a school are also subject to the NESHAP's. EPA has authority to bring an enforcement action against a school or its contractors for improper removal and has done so in some cases. However, I'm concerned of whether or not we're catching all of the problems.

Spring is a busy season for construction and, therefore, demolition and renovation activities. Schools closing for the summer may be involved in abatement activities while our children are not present, so now is a good time, I think, to revisit the question of whether the EPA is doing all it can under these laws to protect human health.

While our focus today is on AHERA and the NESHAP for asbestos, we should keep in mind that this Nation has not addressed the full range or problems associated with asbestos. For example, EPA proposed a rule under the Toxic Substances Control Act in January 1986 to ban asbestos in products like pipes and floor tile. Some uses were to be banned immediately and others phased out over a 10-year period. The rule is still in the proposed stage.

As required by AHERA, EPA recently completed their building study. Let me read from that study and their conclusions. It says that asbestos in a public building represents "a potential health hazard which deserves our careful attention." It goes on to say "a comprehensive regulatory and inspection and abatement program" is not "appropriate at this time."

Asbestos poses a serious and far-reaching problem. As we talk today about some of the actions taken to address the dangers associated with asbestos hazards, I think it's important that we not give up trying to reduce the hazards just because they're not easy.

The first panel of witnesses this morning is Dr. Donald E. Kirkendall, the deputy inspector general for the U.S. Environmental Protection Agency. And he is accompanied today by Ernest Bradley, assistant inspector general for audits, Mr. Robert Bronstrup, supervisory auditor, and Mr. Jannetti.

Welcome gentlemen. As all of you all know it is the policy of this subcommittee, in order to not prejudice past or future witnesses, to swear all our witnesses in.

Do any of you have any objections to being sworn in?

[No response.]

Mr. **Synar**. If not, would you stand and raise your right hand.

[Witnesses sworn.]

Mr. **Synar**. Thank you gentlemen. We welcome you here this morning. As you know, it is the policy of the committee to include the entirety of your testimony into the record, and Mr. Kirkendall, we look forward to your comments at this time.

STATEMENT OF DONALD E. KIRKENDALL, DEPUTY INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY ERNEST BRADLEY, ASSISTANT INSPECTOR GENERAL; ROBERT BRONSTRUP, SUPERVISORY AUDITOR; AND CARL JANNETTI

Mr. KIRKENDALL. Thank you, Mr. Chairman. I'll summarize the full statement if that's OK. I'm pleased to be here to update our prior testimony given before this subcommittee last August on our audits related to asbestos.

I would like to express again our belief that compliance with the asbestos regulations is a serious issue meriting close attention of this subcommittee.

Asbestos is a recognized human carcinogen, as you said. Extensive evidence demonstrates that inhaling asbestos can lead to serious irreversible and often fatal diseases such as lung cancer and asbestosis.

Further, there is a great economic incentive for contractors to circumvent required work procedures designed to minimize the release of asbestos fibers.

Some contractors have resorted to bribing inspectors to keep from following asbestos NESHAP removal requirements. As a result of an investigation by the Department of Labor's Office of Labor Racketeering and our office, 25 individuals working for 22 local and national asbestos removal firms were arrested and charged with paying bribes totaling $170,000 to an EPA inspector to ignore violations of Federal regulations.

These contractors perform most of the asbestos removal and disposal work in the New York and New Jersey areas. To protect the public health, EPA regulations require that certain work practices be followed to minimize the release of asbestos fibers when asbestos waste materials are handled.

Contractors and owners planning to renovate or demolish a building that contains asbestos must do the following:

First, notify EPA or the delegated State agency of the planned renovation or demolition.

Second, remove the asbestos before wrecking or dismantling takes place that would break up the asbestos material.

Third, limit asbestos emissions from the site by keeping the asbestos material wet from the moment it is disturbed until it is disposed of.

And fourth, deposit asbestos waste at acceptable waste disposal sites.

EPA has delegated its primary responsibility for asbestos NESHAP compliance and enforcement activities to 38 States. Some States, in turn, redelegated that function to selected counties, cities, and local authorities. Through a series of audits, we reviewed how EPA's State and local agencies were enforcing asbestos NESHAP in three regions. Those were Atlanta, Chicago, and San Francisco. Specifically, we reviewed programs in California and Nevada, Georgia and Florida, and Illinois and Michigan.

A consolidated report on what we found was issued on March 24, 1988. I would like to add that our report was reviewed by EPA's Assistant Administrator for Air and Radiation who found it to be a helpful document and gave strong support for our conclusions and recommendations.

Overall, we found State and local programs were not performing inspections of asbestos demolition and renovation projects in full compliance with EPA's enforcement strategy. We found that EPA regional personnel in Atlanta and San Francisco maintained little oversight over State and local programs which would alert them to problems in those delegated programs.

Oversight is important so that weaknesses in State programs can be identified and mutual commitments made to correct those weaknesses. For example, regional personnel in Atlanta, when evaluating State and local asbestos control programs, did not review actual demolition and renovation inspection reports or enforcement cases.

Our audit showed that inspectors generally did not observe the work practices of asbestos removal contractors and few inspection reports we reviewed included observations of the disposal procedures used by the contractors. Very few inspections were performed during the time of actual asbestos removal and inspectors did not generally enter the cleanup areas. Consequently, the inspectors were unlikely to identify significant violators.

One reason inspectors were reluctant to enter asbestos contaminated areas was due to the lack of adequate respiratory protection equipment. Further, EPA's own guidance is unclear on what level of protection is needed in all types of inspections. We also found that inspectors are generally not part of a medical monitoring program.

Another reason inspections were not performed while asbestos was being removed was that inspectors were not receiving notification of building demolition or renovation in time to schedule those inspections. NESHAP requires notification as soon as possible prior to removal operations without giving any specified timeframe. Frequently the notification came too late to schedule onsite inspections. What is even more alarming is that EPA estimates that up to 50 percent of asbestos removals are conducted with no notification at all.

The National Association of Demolition Contractors said that contractors do not notify Federal or State agencies because this is inviting inspectors to arrive onsite and cite them for violations. The identification of nonnotifiers is important from the standpoint of the large number of contractors doing work in asbestos removal. EPA estimates there are about 6,000 asbestos removal contractors in the country. More importantly, owners and contractors who violate EPA's asbestos notification regulations are less likely to comply with the EPA work practice requirements.

The following examples illustrate the hazardous conditions that can result from companies failing to notify EPA of asbestos removal.

At one apartment building, the contractor did not use any of the approved methods of work practices for waste processing, labeling, or disposal of asbestos. The asbestos was placed in about 25 supermarket trash bags, closed with twist ties and placed in a boilerroom and on an outside patio. The bags had no warnings of any type and the material was not wetted in any manner. Thus, the bags could have easily been opened which would release asbestos fibers in the ambient air and create a hazardous condition to the general public.

Regional inspectors, in another case, received complaints of a fire in a building that possibly contained asbestos.

Upon arrival at the site, inspectors found firemen dousing a fire with water while 10 or 12 children looked on. An inspection showed that removal contractors had left large pieces of asbestos material scattered on the floor. Outside of the building, inspectors found asbestos material on the sidewalk in a waste container that had about 30 to 35 garbage bags full of material having an asbestos content of about 90 percent. Several of the bags were broken open and some bags were not tied shut.

Another major issue in our report dealt with the assessment of penalties for violations of NESHAP regulations. We concluded that penalties were almost nonexistent because of a general lax attitude toward penalizing violators. Consequently, contractors and owners were not deterred from violating the regulations.

For example, in the San Francisco region, region 9 issued a finding of violation to a contractor for failing to provide notice of renovation, who then removed the waste in a manner that broke up the friable asbestos material. In this instance, both the workers and the general public were exposed to asbestos fibers. No penalty was assessed even though EPA's penalty policy showed a possible penalty of $37,000, would have been appropriate.

In Georgia, initial penalty calculations were based on the EPA civil penalty policy. However, the amounts were automatically reduced by 90 percent prior to making settlement proposals to the violators. In addition, if the violator was cooperative and agreed to take corrective action, the penalty assessment was frequently reduced or waived altogether during the settlement process.

EPA's Office of Air and Radiation has revised the Agency's asbestos NESHAP strategy. The revised strategy addresses the issues in our report and should provide for better oversight by EPA regions of delegated State programs. The revised strategy should also result in better inspection and enforcement procedures. When we appeared before this subcommittee last August, we discussed our audit of EPA's program to award grants and loans to needy schools for asbestos abatement projects. In response to our audit, the Agency has revised its procedures to improve its administration of the Asbestos Schools Hazard Abatement Act.

We reaffirm our position to continue our work with the Agency to improve these important programs. During the coming years, we will perform audits to help ensure that the asbestos programs are operated in an efficient, economical, and effective manner.

Mr. Chairman, that concludes my summary statement. We would be happy to answer any questions that you may have.

[The prepared statement of Mr. Kirkendall follows:]

TESTIMONY OF DONALD E. KIRKENDALL
DEPUTY INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT
ENERGY AND NATURAL RESOURCES
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

June 1, 1988

Good morning, Mr. Chairman and members of the Subcommittee. I am pleased to update Office of Inspector General testimony given before the Subcommittee on August 3, 1987, on the status of audits we have conducted relating to asbestos.

Asbestos is a recognized human carcinogen. Extensive evidence demonstrates that inhaling asbestos can lead to serious, irreversible and often fatal diseases such as mesothelioma, lung cancer and asbestosis. These diseases are linked to ambient environmental exposures as well as to occupational exposure.

A. Consolidated Report of Audit on EPA Asbestos NESHAP Program

Last August we testified before the Subcommittee about the problems we found in EPA Region 5's administration of the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) program. As part of this audit we reviewed State and local implementation in the States of Illinois and Michigan. Since that time we have completed audits in Region 4 (Atlanta), and Region 9 (San Francisco). As part of these audits we performed reviews of selected programs in Florida, Georgia, California and Nevada. The results of these reviews were combined into one consolidated report, issued on March 24, 1988, addressing the problems in the program which we see having nationwide impact, and recommending actions and policy changes to alleviate these problems.

I want to stress the excellent working relationships between OIG staff and EPA management throughout this effort. In reviewing the consolidated audit report, the Assistant Administrator for Air and Radiation indicated that the report was a helpful document and gave his strong support for its conclusions and recommendations. His staff maintained close contact with us throughout the audit and began taking corrective action before our reports were finalized. Subsequently, his office issued a revised asbestos NESHAP strategy which addressed the issues in our report and described the actions to be taken to better ensure that EPA regional and delegated state programs are effective. These planned actions are discussed in my testimony. The strategy document is intended to provide emphasis and assurances to regional offices and States that asbestos occupies a high priority and that EPA is totally committed to a strong enforcement posture.

Before discussing the results of our audit, we would like to provide some background information on the NESHAP program and the management of this program.

1. Background

Emissions of asbestos to the ambient air are controlled under Section 112 of the Clean Air Act which established the NESHAPs. EPA regulations specify control requirements for most asbestos emissions, including work practices to be followed to minimize the release of asbestos fibers during handling of asbestos waste materials.

Contractors and owners planning to renovate or demolish a building that contains asbestos must:

- Notify EPA or the delegated State agency of the planned renovation or demolition;
- Remove the asbestos before any wrecking or dismantling that would break up the asbestos material; and
- Limit asbestos emissions from the site by keeping the asbestos material wet from the moment it is disturbed until it is disposed.

In addition, EPA regulations prohibit any visible emission from the collection, packaging, transporting, or depositing of asbestos from any demolition or renovation, and require that asbestos waste be deposited at acceptable waste disposal sites.

Compliance with EPA's regulations to control asbestos emissions is important. Agency data shows that the number of demolition and renovation projects has risen significantly from 20,537 in 1985 to 29,086 in 1986 and 43,496 in 1987. A 1984 EPA building survey estimated that as many as 733,000 public and commercial buildings in the nation have asbestos.

EPA has delegated its primary responsibility for the NESHAP compliance and enforcement activities to thirty-eight States through grant agreements or memoranda of understanding. Some States in turn redelegated the function to selected counties, cities, and local air authorities. EPA strongly supports the establishment of new State and local programs and the strengthening of existing programs to deal with hazardous air pollution problems.

The States are responsible for developing a quality compliance and enforcement program. To build a successful program, the States must develop and maintain an inventory of regulated sources which is current, complete, and accurate. States are also responsible for implementing a compliance monitoring program to establish an enforcement presence and to identify potential violations. When violations are found, States must track and resolve significant noncompliance. When necessary, States must ensure there is a timely and appropriate enforcement response to violations.

With delegation of the program, the role of EPA's regional offices shifted to guiding, reviewing, and evaluating the adequacy of State and local programs; and providing technical assistance. Also, EPA retains responsibility for ensuring fair and effective enforcement of Federal requirements and a credible national deterrence to noncompliance. Accordingly, EPA needs a strong, predictable, and dependable system of regional support and evaluation to periodically assess the performance of delegated programs in order to identify strengths and weaknesses in the program and to develop mutual commitments to correct problems.

2. Oversight

Our audit showed EPA's oversight of State delegated programs varied significantly among regions.

In Region 8, officials made comprehensive evaluations of State NESHAP programs. These evaluations were initiated by the region for the purpose of identifying needed improvements in these delegate programs. They covered pertinent aspects of each State's program including training, safety, resolution of violations, and inspections.

The evaluations disclosed significant deficiencies. Regional officials issued draft reports to each State for comment. After receiving comments from the States, regional officials issued final reports with recommendations for strengthening State programs.

Neither Region 4 nor 9 had adequate oversight of delegated State programs through an effective evaluation system. Thus, these two regions were less likely to detect and correct program deficiencies at delegated agencies. The following illustrates the deficiencies in oversight that we found in these two regions.

When evaluating State and local asbestos control programs in Region 4, EPA personnel did not review actual demolition or renovation inspection reports or enforcement cases. For instance, the region's performance report on Florida's program simply described the State's notification procedures, filing methods and inspection statistics. While potential weaknesses were identified in the report, regional personnel did not provide the State with any corrective recommendations. When the State expressed concern that contractors and building owners were not providing notification of asbestos projects, the region offered no written recommendations or comments regarding the identification of non-notifiers.

Region 9 personnel did not assess the performance of delegated State programs. Consequently, this region was also unaware of delegated State agencies' procedures and practices or adequacy of their administration of the NESHAP program. Our audit showed that the programs of the State delegated agencies were deficient in: (1) reviewing notices for completeness and timeliness; (2) performing adequate inspections; (3) developing inspection strategies to ensure compliance with NESHAP requirements; (4) developing and implementing a program to identify non-notifiers; and (5) assessing adequate penalties to deter future violations.

EPA's revised asbestos strategy addresses the oversight issue discussed in our audit report. The revised strategy explains that Regional Administrators should implement oversight programs to ensure delegated State and local agencies are performing acceptable compliance inspections, and resolving violations appropriately. The revised strategy explains several elements that should be part of the region's oversight program including: (1) joint EPA-State inspections, (2) targeting of contractors for inspection, and (3) inspector training and safety.

3. Inspections

One of the major issues in our report pertained to inspections of contractor work practices. We believe that a sound inspection program is a key ingredient to the success of the overall program. Inspections should focus on compliance with EPA regulations specifying work practices to minimize the release of asbestos fibers. These work practices are expensive, thus the incentive to circumvent the work practices is great. Such actions can result in large profits for contractors. Some contractors have even resorted to bribery of inspectors to keep from following asbestos NESHAP removal requirements.

As the result of a continuing joint investigation by the Department of Labor's Office of Labor Racketeering and the EPA OIG, 25 individuals were arrested and charged on January 5, 1988 with bribing an EPA inspector. These individuals worked for 22 local and national firms that performed the majority of asbestos removals and disposals in New York and New Jersey. The arrest complaints charged that the bribes were paid to induce the EPA inspector to overlook violations of Federal rules and regulations with regard to asbestos removal conducted by the defendants, and to stay away from job sites being worked by their companies.

According to the U.S. Attorney for the Eastern District of New York, the bribes occurred between 1983 and 1987, and totaled more than $170,000. The largest single bribe was $25,000. To date, a grand jury has returned 10 indictments against 13 individuals. Eleven more indictments are in process.

Our audit identified a number of areas where the Agency needs to take action to improve the effectiveness of the inspection program. These include: (1) the need for a strategy to identify contractors who do not notify the Agency of upcoming removal work; (2) the need for timely notification; (3) the need for systematic inspection procedures; (4) the need to observe work in process; and (5) the need for consistent guidelines on safety equipment.

a. Need for a Strategy to Identify Non-notifiers.

Our audit showed that State and local agencies in general have not developed adequate inspection strategies to ensure compliance. As a result, significant violations may go undetected. Without good inspection strategies, delegated agencies are less likely to locate contractors who do not notify EPA or the State of their demolition/renovation projects.

The identification of non-notifiers is important from the standpoint of the large number of contractors doing work in this area. More importantly, owners/contractors who violate EPA's asbestos notification regulations are less likely to comply with EPA work practice requirements. This is supported by a statement made by the National Association of Demolition Contractors (NADC). In January 1987, NADC provided comments to EPA's proposed changes to the asbestos NESHAP regulation. With respect to notifications, NADC explained there is a link between notifications and the likelihood of adhering to other required work practices. NADC stated:

> Most contractors believe that there is little potential for being cited if notification is not tendered in accordance with the regulation. Many feel that notification substantially increases the chance of citation. If a contractor elects to defy the notification requirement of the current NESHAP his chief objective becomes quick completion of the work. Little attention is given to

expensive work practices prescribed by the regulation. This course of action can result in profits much larger than the total job cost.

The following examples illustrate the hazardous conditions that can result from companies failing to notify EPA of asbestos removal:

- At an apartment building a contractor did not use any of the approved work practices for waste disposal, processing, or labeling. Instead, the contractor put the waste in plastic trash bags and closed them with twist ties. The contractor kept some of the bags in the boiler room and on the outside patio. The bags had no warnings labels on them, and the material was not wetted to reduce airborne particles. This incident was brought to the inspector's attention by a citizen complaint. EPA has proposed a civil penalty of $1500 for the violations.

- Regional and state inspectors received complaints of a fire in a building that possibly contained asbestos. Upon arrival at the site, inspectors found firemen dousing a fire with water while 10-12 children looked on. An inspection showed that the contractor had

> removed large pieces of asbestos from the boiler room, but large pieces of material still remained with many small pieces scattered on the floor. The floor of another room was also covered with dust and small pieces of insulation, and a pile of pipewrap lay in the corner. Outside the building, inspectors found asbestos material on the sidewalk and a waste container that had 30-35 garbage bags full of material having an asbestos content greater than 90 percent. Several of the bags were broken open and some bags were not tied shut. The bags did not have proper asbestos hazard warning labels. In this case, a civil action ordered the contractor to correct all work practice deficiencies at the site.

EPA regional asbestos officials need to work more closely with State and local agencies to establish systems to identify non-notifiers. One success story is that of Florida's Southwest District which successfully identified non-notifiers. The district inspector worked with local permitting authorities to inform building owners and demolition contractors of their asbestos notification responsibilities. The district's efforts paid off. The number of notifications for demolitions and renovations increased by 205 percent within a 12 month period. For example, St. Petersburg identified 105 demolitions from June 1986 through May 1987. They identified none in the previous 12 month period. These results were possible because the district dedicated an air compliance engineer to the asbestos and air toxics programs.

EPA's revised asbestos NESHAP strategy in part addressees the issues of non-notifiers. Efforts by delegated agencies to identify non-notifiers should include:

- Checking building permits or public work files;
- Reviewing waste disposal site records;
- Coordinating with State, county and city departments of building permits and health, and with Federal offices such as Occupational Safety and Health Administration and Department of Education; and
- Reviewing publications such as the National Wrecking and Salvage Journal, newspapers and magazines.

Overall, the revised asbestos NESHAP strategy should improve the identification of potential non-notifiers by requiring a more effective targeting method.

b. Need for Timely Notification.

Our audit also showed that inspectors often do not receive notices about asbestos demolition and renovation projects in time to make an inspection. This occurred because the NESHAP regulations only require that the owner or contractor notify EPA or the State "as soon as possible" prior to the actual start of the removal operation. Our review of 59 notices received by a Michigan district office showed 25 of the notices were received after work was to be completed.

Region 9 did not inform delegated agencies about notifications it received from locations within the delegated agencies' jurisdictions. This adversely affected the compliance program by decreasing the opportunity to schedule inspections during asbestos removal. Although each delegated agency required direct notification of an asbestos demolition/renovation action, these notifications were not always received. It is important that regional officials provide the cognizant delegated agency timely information on notifications they receive which relate to locations within a delegated agency's area.

We recommended that the Assistant Administrator for Air and Radiation take steps to ensure that notifications are received in time to perform inspections. The Agency should consider amending the asbestos NESHAP to require contractors to submit a notification by a definite date prior to the start of the asbestos demolition/renovation project. The Agency could consider, as an alternative, encouraging each delegated State to require notifications by a definite date.

c. Need for Systematic Inspection Procedures.

Our review of inspection records at the State and local agencies showed that inspection checklists were not comprehensive and, thus not conducive to performing a thorough inspection. Checklists need to be comprehensive to show how the inspector reaches conclusions on what he observed which may later be used as the basis for enforcement actions. For example, in Michigan, inspectors generally used an all-purpose activity report to document inspection results. This form contained no questions or suggestions to guide the inspector in the examination. Without this guidance, there is limited assurance that the inspector will cover all required areas, or that each inspector will provide the same essential inspection coverage.

The checklists did not indicate whether the inspector entered the removal area or limited the inspection to an external review of the facility. In addition, the inspection checklists failed to indicate whether the inspector actually observed the abatement contractor's work practices of waste handling or disposal. In one instance an inspector described how he determined that asbestos was adequately wetted prior to removal. His decision was based on the fact that a water hose was in the area where the asbestos insulation was being removed.

In California, the Santa Barbara County Air Pollution Control District inspectors used a checklist developed for permit compliance inspections at stationary sources of air emissions. This checklist did not provide information on the building, location or quantity of friable asbestos material, removal procedures, or waste handling procedures. Likewise, the Air Pollution Control District checklist used in Sacramento County did not provide information on the owner, building, activity taking place, or location of the friable asbestos material. It did not provide for comments on removal and waste handling procedures.

Subsequent to our report, EPA provided a sample checklist for inspectors to use as an outline of what to look for during the inspection.

d. Need to Observe Work in Process.

Our audit showed that inspectors generally did not observe the work practices of asbestos removal contractors, and practically none of the inspection reports we reviewed included observations of disposal procedures. Very few inspections were performed during the time of actual asbestos removal and when removal was taking place, inspectors did not generally enter the cleanup area.

By not observing the asbestos removal process, the inspector could not check to see if:

- The removal site was properly prepared to prevent outside emissions of airborne asbestos fibers during removal;
- The asbestos-containing material was properly wetted by removal from adhering surfaces;
- The asbestos-containing material was properly bagged and labeled;
- Bags were carefully loaded and unloaded on the hauling vehicles with no breakage; and
- The landfill met the asbestos NESHAP regulations requirements.

Consequently, the inspectors were not likely to identify significant violators and pursue enforcement actions against them. In order to complete the newly developed checklist discussed above, the inspector must now enter the removal area.

e. Safety Concerns.

Inspectors were often reluctant to enter the contaminated area because they were concerned over inadequate respiratory safety equipment and guidelines.

In our opinion the inspectors' concerns were valid because of: (1) inconsistent guidance from EPA on what respiratory protection equipment is needed; (2) the use of inadequate safety equipment during inspections; and (3) the lack of a proper medical monitoring program.

The confusion on what level of respiratory protection is necessary has resulted in delegated agencies not always providing respiratory equipment to inspectors. For example, in Region 4 none of the delegated agencies had adequate safety equipment or written health and safety procedures. Georgia had not provided safety equipment to its asbestos inspectors. Instead, abatement contractors were expected to provide the appropriate safety equipment.

Nevada had no respiratory equipment available for its inspectors. In addition, members of the American Association of Retired Persons who performed inspections for Region 9 had no respiratory equipment to protect them from asbestos fibers.

Our audit further showed that asbestos inspectors generally were not provided an adequate medical monitoring program. The lack of an adequate medical monitoring program reduces the likelihood of early detection of asbestos related diseases.

In May 1987 EPA issued interim guidelines on respirator equipment to protect inspectors during inspections. The recommendations in these guidelines range from no respiratory protection under certain specific conditions to several scenarios requiring different types of respirators.

EPA officials advised us that the Agency needs to clarify these interim guidelines because the guidance is inconsistent on what equipment should be used in specific types of inspections. The Agency issued a draft memorandum in March 1988 and plans to issue final guidelines in early 1989.

4. Penalties.

Another major issue in our report dealt with the assessment of penalties for violations of NESHAP regulations. We concluded that penalties were almost nonexistent because of a generally lax attitude toward penalizing violators. Consequently, contractors and owners were not deterred from violating the regulations. Our audit found that: (1) Findings of Violation were not issued, or were not resolved with penalties when inspectors found violations, and (2) penalties that were recommended were too low to deter violations.

For example, Region 9, issued a Finding of Violation to a contractor for failing to provide notice of renovation and removal of friable asbestos material. This finding resulted from an EPA inspecation that noted:

> Ceiling of most rooms pulled down to expose HVAC ducting. Asbestos laden materials in piles on floor. High dust levels. Workmen left door open for ventilation while they were working. No respiratory protection used.

In this instance both the workers and the general public were exposed to asbestos fibers. The region's enforcement action was limited to an Administrative Order requiring the contractor to comply with NESHAP regulations in the future. Based upon the guidance in the Asbestos Demolition and Renovation Civil Penalty Policy, a penalty of $37,000 would have been appropriate.

In the State of Georgia another asbestos abatement company was cited for failure to wet asbestos-containing material prior to removal and storage of dry asbestos material in unsealed bags. The company was not assessed a cash penalty. Instead the Georgia Department of Natural Resources cited corrective actions and the contractor excellent track record of complying with EPA regulations as the basis for not assessing a cash penalty.

When Georgia did assess a penalty, the calculation was based on the EPA civil penalty policy. However, the amount was automatically reduced by 90 percent prior to making a settlement proposal to the violator. In addition, if the violator was cooperative and agreed to take corrective action, the penalty assessment was frequently reduced or waived during the settlement process. The following example illustrates the magnitude of penalty reductions:

> A prime contractor was cited for violations on two separate occasions. The violations included: (a) failure to submit proper notification; (b) failure to adequately wet asbestos containing material prior to removal; and (c) failure to use proper emission control procedures. In addition, asbestos debris was scattered throughout the

> building. The initial penalty calculation (based on the EPA civil penalty policy) was $145,000. The initial settlement proposal was for $10,000, but the penalty proposal was reduced to $7,000. Thus far, the State has collected $4,000 and is pursuing legal action to collect the $3,000 balance.

EPA needs to take prompt action to ensure that violators are assessed appropriate penalties. Otherwise, the credibility of the Agency's enforcement program will suffer because the regulated community will be aware that the Government will not vigorously pursue asbestos NESHAP violations.

EPA's General Enforcement Policy establishes a single set of goals for penalty assessment in EPA administrative and judicial enforcement. EPA's first goal is to deter violations of its regulations and to remove any economic benefit resulting from noncompliance with the regulations. Successful deterrence is important because it provides the best protection for the environment. In addition, deterrence reduces the resources necessary to administer the regulations by addressing noncompliance before it occurs. If the EPA is to achieve compliance with NESHAP, violators and the general public must be convinced that noncompliance will place the violator in a worse economic position than those who have complied.

B. Asbestos in Schools

Another program to control asbestos is the Asbestos Schools Hazard Abatement Act (ASHAA) which authorizes EPA to award grants and loans to needy schools. When we appeared before the Subcommittee last August, we discussed our audit findings and recommendations to the Agency to improve the asbestos grants and loans program.

Today, I would like to briefly discuss actions EPA has taken to address the recommendations in our audit report. We looked at how the Agency was awarding grants and loans to schools with friable asbestos materials. EPA has estimated that 15 million students and 1.4 million school employees are subject to the dangers posed by exposure to friable asbestos.

In our audit, we found that because the Agency's definition of schools that qualified for financial assistance was so broad, approximately $11 million was awarded to schools that did not have the most critical hazards. This occurred because EPA was attempting to comply with Section 512 of ASHAA which requires that each State receive a minimum amount of funds each year. In order to comply, EPA funded some projects in advance of more highly ranked projects in other States.

To correct this situation we recommended that EPA change the definition of a qualified applicant to include only those critical projects that fall within Category I. In response to our audit, the Office of Pesticides and Toxic Substances (OPTS) agreed to modify the strategy used to implement Section 512 of ASHAA to fund only Category I projects for State minimum purposes. However, OPTS will not discontinue implementation of the Section 512 minimum provisions without direction from Congress.

Our second audit finding was that of those applicants funded by EPA, school districts with the highest per capita income, as well as those with the lowest per capita income, typically received 100 percent of the funding needed to complete their projects. We did not believe this met the intent of the program which was to only fund those applicants that could not complete abatement projects without Federal assistance. Since our audit, the Agency has taken steps to refine the award process. We believe these actions will help ensure that the neediest schools receive proportionately greater funding.

We found that States were not participating in the program as actively as envisioned by the legislation. Specifically, States were not submitting priority lists which ranked applicants according to the seriousness of the potential asbestos hazard, nor were they certifying the financial need of applicants. In response to our audit, the Agency has indicated that it will encourage more meaningful State participation by incorporating additional State input into the national ranking process.

The fourth finding in our report was that EPA was not complying with the legislative provision for approving grants. EPA did not state the particular reasons when awarding a grant as required by law. Consequently, there was limited assurance that the applicant's financial need justified a grant, as opposed to a loan. EPA's Office of Pesticides and Toxic Substances agreed to revise their procedures.

Our last finding reported that schools were using various air testing methods for asbestos, which were of varying quality and cost. We recommended that EPA standardize air testing methods for asbestos. On October 30, 1987, the Agency published regulations which require by 1990 that Transmission Electron Microscopy (TEM) be used for all but the smallest projects.

C. Summary

The audits we have discussed relating to asbestos have raised a number of questions regarding the Agency's administration of the Asbestos NESHAPs program and Asbestos Loans and Grants. In responding to our audits, the Agency has taken steps to address our concerns. EPA is working to meet the challenges of controlling asbestos, and we will continue to work with the Agency to help ensure the economical, efficient and effective administration of these important programs. I will be pleased to respond to any questions the Subcommittee may have.

Mr. Synar. Thank you very much. I want to take this opportunity to thank you and your staff for the excellent work that you've done in this area and assisting the subcommittee in putting this hearing together today.

I'd ask unanimous consent at this time that we enter into the record exhibit 1.

[The information follows:]

From: Draft, National Emission Standards for Asbestos --Background Information for Proposed Standards, March 5, 1987

TABLE 7-4. DEMOLITION COSTS UNDER BASELINE

	Cost element	Small school	Medium school	Large school	Small hotel	Medium hotel	Department store	Small grocery	5-unit apartment	50-unit apartment	Small office bldg	Medium office bldg	Large office bldg
1.	Friable materials survey	432	1,220	2,170	693	2,212	657	100	100	500	100	360	2,000
2.	Sampling and analysis	1,080	3,060	3,060	1,260	1,620	1,260	900	900	1,260	1,080	1,260	1,620
3.	Bid spec preparation	283	868	981	27	500	25	25	47	457	49	263	2,709
4.	Notification	50	50	50	50	50	50	50	50	50	50	50	50
5.	Enclosures	--	--	--	--	--	--	--	--	--	--	--	--
6.	Space exhaust	--	--	--	--	--	--	--	--	--	--	--	--
7.	Exposing concealed asbestos	1,025	13,805	29,950	1,130	3,200	300	70	105	21,542	175	575	43,200
8.	Asbestos removal and bagging												
	a. Ceiling	151,200	388,850	857,500	8,400	13,125	--	--	26,250	175,000	25,200	126,000	1,000,000
	b. Pipe insulation	3,290	4,767	10,588	3,641	10,580	1,209	321	536	2,570	643	1,943	13,326
	c. Boilers & structural	225	143,678	318,025	990	269,685	360	315	304	61,949	315	675	347,349
9.	Waste disposal	11,178	78,680	175,932	36,288	104,976	405	243	1,134	35,154	2,105	18,792	275,400
10.	Recordkeeping	--	--	--	--	--	--	--	--	--	--	--	--
11.	Demolition cost with no asbestos	51,840	147,360	325,200	69,320	239,616	65,700	2,800	8,250	50,000	7,200	36,000	288,000
12.	Total cost	220,603	749,674	1,724,796	121,799	645,652	69,966	4,824	37,676	348,482	36,917	185,918	1,982,534
	% of total cost attributable to Asbestos removal	76.5	80.3	81.2	43.1	62.9	6.1	42.0	78.1	85.7	80.5	80.6	85.5

See footnotes at end of table.

(continued)

TABLE 7-4. (continued)

Cost element	Small hospital	Medium hospital	Large hospital	Single unit dwelling A	Single unit dwelling B	Single unit dwelling C	Small power plant	Medium power plant	Small industrial boiler	Medium industrial boiler	Small refinery	Medium refinery	Cruise ship	Cargo ship
1. Friable materials survey	144	600	3,160	100	100	100	--	--	--	--	--	--	NA	--
2. Sampling and analysis	1,080	1,800	1,620	300	300	300	720	720	540	540	720	300		60
3. Bid spec preparation	25	323	451	--	--	--	25	505	--	--	1,967	7,893		--
4. Notification	50	50	50	50	50	50	50	50	50	50	50	50		50
5. Enclosures	--	--	--	--	--	--	--	--	--	--	--	--		--
6. Space exhaust	--	--	--	--	--	--	--	--	--	--	--	--		--
7. Exposing concealed asbestos	510	4,000	30,580	--	--	--	--	--	--	--	--	--		--
8. Asbestos removal and bagging														
a. Ceiling	2,800	--	133,000	--	--	4,508	--	--	--	--	--	--		30,000
b. Pipe insulation	1,668	12,332	94,799	--	--	--	3,210	42,800	1,070	6,315	768,346	3,367,162		27,820
c. Boilers & structural	315	154,386	2,531	183	575	1,759	2,318	34,875	3,856	24,030	489,663	1,332,567		31,500
9. Waste disposal	648	71,442	28,998	211	259	697	3,726	140,778	2,430	15,552	887,598	3,348,216		43,740
10. Recordkeeping	--	--	--	--	--	--	--	--	--	--	--	--		--
11. Demolition cost with no asbestos	14,400	60,000	948,000	1,288	1,288	1,288	14,415	92,200	1,385	8,130	1,554,061	6,369,897		--
12. Total cost	21,640	304,933	1,243,189	2,132	2,572	8,702	24,446	311,928	9,331	54,617	3,702,405	14,426,085		

NOTES: Costs include the cost of complying with applicable OSHA standards.

NA = Not applicable.

33.5 80.3 23.7 39.6 49.9 85.2 41.0 70.4 85.2 85.1 58.0 55.8

Mr. SYNAR. This is information which was prepared by EPA regarding the cost of the demolition projects with or without asbestos removal.

The reason I'm giving you that information, Mr. Kirkendall, is the fact that the information you provided the subcommittee regarding the bribery of an EPA inspector, obviously, is very unsettling.

From this information that you have before you, it shows that the cost of proper asbestos removal is very high and for a contractor that is inclined to "cut corners" it certainly suggests that an investment in a bribe might be a very profitable investment on his part.

Let me ask you: what steps can program officials take to make sure that bribery like you described does not occur?

Mr. KIRKENDALL. I believe, Mr. Chairman, that fraud prevention is really the secret. We can catch bribery after it occurs only in rare instances.

Bribery is not something that's easy to detect. You either get somebody to admit that they accepted a bribe or you have to go through some pretty sophisticated investigating procedures to uncover that.

So prevention, in my opinion, is really the way to go and you have to, in my view, have strong administrative controls in place.

Controls such as followup inspections by the EPA regional offices, review of case files, joint Federal-State inspections, and comprehensive evaluations, such as our report shows that our Chicago regional office did, all can have a positive deterrent effect.

So a strong oversight program is one of the things that I think is necessary and the other thing is that when we catch violators, I believe that we have to show them that we mean business. We have to make it economically infeasible for them to violate asbestos removal requirements.

If we don't use the enforcement program to penalize the contractors who violate asbestos removal standards so that it's felt in their pocketbooks, I believe they will continue to do it as a cost of doing business.

Mr. SYNAR. Mr. Kirkendall, tell me about the inspection reports and how they are kept and the kind of followup you're talking about that's needed in proper oversight.

Mr. KIRKENDALL. Mr. Bronstrup was our onsite manager for the NESHAP audit and he had some hands-on experience dealing with these inspection reports, so I would ask him to answer that.

Mr. BRONSTRUP. The inspection reports were maintained often by the State agencies at their local district offices.

They were filed by the inspectors when they returned and we reviewed those, a sample of those, during our audits.

Mr. SYNAR. What did you find?

Mr. BRONSTRUP. Oftentimes, we found that the length of the inspection reports vary greatly. Some agencies had more comprehensive checklists which allowed the inspectors to follow a very comprehensive procedure in performing an inspection—what to look for during an inspection. Other State agencies had a very brief inspection checklist which didn't allow us really to evaluate the quality of the inspections.

Mr. **Synar**. So what you're saying is that if records aren't kept or they're vague, then the inspector has a hard time really doing the overlooking.

Mr. **Bronstrup**. A harder time, that is correct.

Mr. **Synar**. Let me see if I can get a commitment out of you all. Would you all think it would be within your purview to maybe do some spot inspections?

I mean, have you all considered that to see whether or not the type of inspection oversight EPA's going to do has been successful? Have you all considered going in and doing spot inspections yourself?

Mr. **Kirkendall**. I don't believe we have up to this point, but certainly, as we go along and do future work, we can build that in and we will continue to do work within this area.

Mr. **Synar**. Let me strongly suggest that this may be something that the Inspector General's Office could do. Obviously one of the things that you've clearly pointed out in your testimony today is the fact that without proper inspection, we're not going to really accomplish the task, and you all doing spot inspections of that is important to help protect against bribery.

Mr. Kirkendall, your statement talks about region 5 and that is one region where you conducted oversight reviews particularly.

You found a number of problems in the States that had the delegated authority. Why don't you describe for the subcommittee the kinds of problems that you all found in region 5?

Mr. **Kirkendall**. It could really be broken down into two areas. The first one is, and this applied to all four of the States that region 5 looked at and those States were Indiana, Ohio, Wisconsin, and Illinois, that the inspectors did not do the inspections at the time of the removal itself.

They either did it before or after removal or didn't do it all. And if you're not there when the removal is taking place, it's hard to determine whether it's actually being done correctly.

The other area could be characterized as the waste transport dumping, and landfill operations. Most States of that group 3, as a matter of fact, Indiana, Ohio, and Illinois, did not observe the transportation, dumping, and landfill operations.

If you just look at the part of the operation where the asbestos is actually being removed from the site, but fail to continue it through to its final resting place, then there are all sorts of things that can happen in between that could cause the fibers to get into the air if the asbestos material is not disposed of properly.

Mr. **Synar**. Let me go through the region 5 thing because I think that's interesting since we did delegate. Did you all find that Wisconsin did not even inspect any asbestos demolition or renovation removal projects?

Mr. **Kirkendall**. That's correct, not at the time the asbestos removal was taking place.

Mr. **Synar**. Did you also find that Indiana's inspections of the projects did not include observations of the waste transport, dumping, and landfill operations?

Mr. **Kirkendall**. Yes, sir.

Mr. **Synar**. And in Ohio, you also found that they were needing to perform inspections before removal, observed the waste transport and landfill operations and none of those reports that had observations?

Mr. **Kirkendall.** That's right, sir.

Mr. **Synar.** And then in Illinois, you had none of the reports that contained information with respect to landfill observations. So basically what we're looking at is that in those four States, where the responsibility was with the States, in many cases the State inspectors had not even inspected the asbestos waste disposal sites, had they?

Mr. **Kirkendall.** In some cases.

Mr. **Synar.** So one would have the belief that not only EPA but the responsibility which is now being "delegated" down to the States is not being carried out either.

Mr. **Kirkendall.** I believe the same lax attitude toward enforcement prevails all the way through the system.

Mr. **Synar.** With respect to that lax enforcement, you stated in your report that "penalties were almost non-existent" because of a generally lax attitude towards penalizing violators.

Did you find that pervasive throughout the whole asbestos enforcement system?

Mr. **Kirkendall.** Yes. The EPA emphasized taking corrective action as opposed to penalizing violators through the enforcement program.

The lax attitude related to that also applied to the State and local authorities. The approach very often resulted in substantial reductions to the proposed penalties, which can cause, we believe, a couple of problems.

First, contractors would rather pay a minor penalty as a cost of doing business than pay the substantial amount of money to do the work right in the first place.

Second, reduced penalties may send the wrong signal to the potential violators as to the seriousness with which EPA and the State delegated agencies view these violations.

Mr. **Synar.** That concludes my first 5 minutes. Mr. Kyl.

Mr. **Kyl.** Thank you, Mr. Chairman. Again, I didn't get to express this earlier, but I'm sorry I wasn't here right at the very beginning.

I wanted to shift gears just a little bit and talk about some of the ongoing work that you're doing on the program as it relates to schools, because, as you know, this is an area where there has been a considerable amount of concern expressed by school officials, administration people, PTA's, and others regarding problems that are going to arise with the deadlines that are coming up very shortly.

I realize that the bulk of the work that you're reporting on today does not relate to the school situation, but I'd like to ask you about that, if it's all right.

My concern here is that, from what you've testified to today and on prior occasions, one could get the impression that the Government, by requiring certain jobs that are really bigger than the capacity of people to perform them, is creating a problem.

Asbestos, by its nature, undisturbed, is relatively harmless. When disturbed, it becomes a critical problem. I'm wondering whether you believe, based upon your experience, that all of the school districts around this country are going to be able to comply with the law, both the deadline for the management plan and the actual compliance date next year.

And if not, whether those deadlines themselves might pose more of a problem, more of a health problem, than would be the case if we didn't require activity.

And perhaps based upon your experience whether a stretching out of the compliance date might not, therefore, be in order.

Mr. **Kirkendall.** It's my understanding, Mr. Kyl, that there are a number of pieces of legislation pending that would extend that compliance date, both for the management plan and the implementation.

As far as our work goes, we plan on continuing to do work in the asbestos area. Depending on how these dates turn out, we plan to do some more work in fiscal year 1989.

As far as whether all of the schools can comply or not, I really don't know from our perspective whether they can or not.

We've done enough work to indicate that there is a problem out there. The technology is there, if it's used and used properly. That's been the focus of our work to date.

Mr. **Kyl.** Let's pursue that a little bit. The technology is there, but is there a sufficient work force in effect and properly disbursed around the country to be readily available to apply that technology is one question.

And I think from some of what's been testified to, there are certainly questions raised about the availability of the right people in the right place.

And second, sometimes the Government's requirements, as has been testified to earlier, promotes shortcuts and you've been able to find some of those and nobody likes to see those.

But they may be as much a result of requirements that are almost impossible to meet as they are bad faith on the part of the people who are trying their best to comply with the law.

And I wonder if you could, based again upon your experience in the inspections you've performed and in the audits that you've performed, whether you would agree with the proposition that maybe we don't have to try to line up our ability to comply with the deadlines that we've set for compliance.

Mr. **Kirkendall.** Let me have Carl Jannetti, who is from our Philadelphia office and has spent a good deal of his life in the last couple of years working on these jobs, respond to that.

Mr. **Kyl.** And if I could, just add this note. There are proposals pending, but there's also been a suggestion that in an election year it would be very difficult to get a delay passed.

And I'm concerned that we need to do the right thing, not the political thing, and that the right thing may be to put back these dates a little bit so that people can comply in the right way rather than trying to do a bad job which results in more injury than if we just left it alone for a while.

Mr. **Jannetti.** During our audit, we visited a number of schools. The focus of our audit was not to assess the issue of your question, whether or not the schools could comply, but we found no apparent problem.

Again, I say our audit did not focus specifically on that issue, but it did not appear to be a problem from the small number of schools that we visited during that audit.

Mr. **Kyl**. What wasn't a problem? The cost, the availability of the people to perform the job?

Mr. **Jannetti**. The availability of contractors did not surface as an issue at that time.

Mr. **Kyl**. How about the costs?

Mr. **Jannetti**. We encountered no complaints from the people we talked to in the schools we visited; however, these were the schools that had received Federal funds. They just want to get rid of the asbestos.

Mr. **Kyl**. Any opposite experience that any of the rest of you could testify because there are people who have talked to me who certainly have a different point of view on it.

Mr. **Kirkendall**. Well, we looked at areas where the grants or loans were awarded so we were looking at areas where the money was there. We weren't looking at the areas where grants were not awarded.

So for the schools that we went to, they had the money to do the job. It wasn't really within our scope to address what you're asking us in that particular audit.

Mr. **Kyl**. And again, I appreciate the fact that my questions are a little bit afield from what you've testified to here, but I'm trying to get some additional information on it.

Mr. **Synar**. I think you're on target, Mr. Kyl. Your time has expired. We'll come back. I wanted to pursue what Mr. Kyl is talking about because I think really that's what the meat of what schools are really focused in on.

Now, correct me if I'm wrong. This law went into effect in October 1986. Correct?

Mr. **Kirkendall**. I believe so.

Mr. **Synar**. And the schools and the school boards of this Nation have known for that period of time up to October of this year that those plans were going to have to be presented. Is that correct?

Mr. **Kirkendall**. Yes, sir.

Mr. **Synar**. When we talk about implementation, as Mr. Kyl has, we're not really talking—we're really talking about a two-phase thing.

We're talking one about getting the plans in. Correct? And then the second part is beginning the cleanup.

Now, in your review of it, is there any reason to believe that the October date in just getting the plans in, is that onerous to the schools?

Mr. **Kirkendall**. Again, let me ask Mr. Jannetti to answer that since he was actually out there.

Mr. **Synar**. Mr. Jannetti. I mean, those plans aren't that complicated. It's not something that's going to require a tremendous amount of paperwork, is it?

Mr. **Jannetti**. Again, during this audit, we did not assess whether or not the schools could or would comply with the management plans. It just was not an issue at the time.

Mr. **Synar**. Have you got any gut feeling about it?

Mr. **Jannetti**. I would say that the schools would give it their best shot. I mean, they—based on the people that we talked to they want to comply. They'll try to comply.

Mr. **Synar**. With the first part of it which is getting the plans in themselves. We're going to get into that when EPA comes up here because I want to go through all of those phases.

Let me ask you one question. One of the problems that we always hear about is a lot of the responsibility is going to be put on the States to implement this program, and they need guidelines to do the job properly.

And one of the guidelines is what kind of equipment inspectors should wear in the workplace when they're going in to review that.

Did the memorandum of the Agency, which was issued in March 1988, make clear the type of respiratory equipment which was needed to protect those inspectors?

Mr. **Kirkendall**. Yes, it does, Mr. Chairman. That memorandum is a draft memorandum that's currently circulating within the Agency for comment.

We reviewed a copy of that and it does provide guidance in some detail for the kinds of equipment that would be needed on sites.

It also recognizes the fact that these aren't cookie-cutter operations and as you go into each site you have to use some judgment as to the kind of equipment that you need to get the job done.

But it does——

Mr. **Synar**. You're saying the States would have adequate guidelines to do it?

Mr. **Kirkendall**. Yes.

Mr. **Synar**. Mr. Kyl.

Mr. **Kyl**. I have nothing further, Mr. Chairman.

Mr. **Synar**. Gentlemen, again, thank you for your presentation today and, again, the subcommittee is very indebted to the work you've done in our behalf and we appreciate it.

On the spot inspections, I think that's something that you all might want to take into the formula because obviously, as you said in your own testimony, proper oversight is the key to this thing.

Mr. **Kirkendall**. We're in the process of putting together our fiscal year 1989 audit plan, Mr. Chairman, and certainly that's one of the things that we will consider.

Mr. **Synar**. Thank you very much, Mr. Kirkendall. Our next panel is Mr. Jim Oglesby, vice president of the National School Boards Association, and Mr. Bill Kitchen from Johnstown, NY. If those gentlemen would come forward at this time.

Gentlemen, welcome. As you saw from the previous panel, in order not to prejudice future or past witnesses, we swear all our witnesses in. Do either one of you have objections to being sworn in?

[No response.]

[Witnesses sworn.]

Mr. **Synar**. I guess we'll start with you, Mr. Oglesby. You're the vice president of the National School Boards. We have your testimony here before us and we would ask you to summarize at this time.

STATEMENT OF JAMES R. OGLESBY, PRESIDENT-ELECT, NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. **Oglesby**. Mr. Chairman, my name is Jim Oglesby. I'm the president-elect of the National School Boards Association and also a school board member in Columbia, MO, and I came here on behalf of the organization to present this testimony. I'll summarize the testimony by telling you that we're going to talk about three basic areas: Technical assistance, insurance and bonding, and, of course, the issue of funding. I represent over 97,000 local elected officials that basically are having problems in terms of implementing the AHERA guidelines.

Once we receive the information on the guidelines, all school districts, of course, start at some phase of trying to implement these guidelines.

The funding issue is a major problem. The moneys in most of the States that we represent come in different directions.

Most of it, of course, comes from the State government because the responsibility for providing education is with the State.

Most of those resources that come into local school districts are for the instruction of programs. With the AHERA guidelines, even though those guidelines were published earlier in 1986, those guidelines in terms of specifications did not reach us with any specificity until much later.

We also are supportive of the delay. When you talk about the things that you mentioned at the beginning about the health hazards that are involved with asbestos, when that information hit our local community, our constituents in the community want to know are their kids safe in our schools, has asbestos been found in the building, are their kids going to be harmed for the rest of their lives resulting from being exposed to asbestos.

When that information comes out on the front page of the local Columbia, MO, paper, my phone rings and the parents want to know which ones of our schools do we have asbestos in.

When I came on the board in 1974, we had a presentation made to us by architects regarding removal of asbestos and we've been dealing with asbestos in our schools since.

In our district, we've spent over $2 million removing asbestos from our buildings. To give you the funding side of it, our district is a small district.

We have about 15,000 students in our district. We have a budget of about $57 million. Eighty percent of that $57 million goes into the instructional program and the other 20 percent is used for the rest of the operations of the school district.

This is by State law. Out of that 20 percent, we have to remove asbestos and do whatever maintenance and repairs that we have to do within the district.

In order to get additional moneys to do that, we have to pass a bond issue and we have to convince our public that it's the right thing to do, and we do that.

Of course, in some States there are caps. For example, in your State of Oklahoma there are caps. There are problems, and I've talked to, for example, Theo Smith from Broken Arrow, and they are caught between the State and the Federal Government in terms of implementing the regulations and in terms of providing funding for those.

In terms of the implementation, there are several problems in terms of making sure that competent people are available to accomplish the removal.

When this legislation came out, a number of fly-by-night operations sprang up almost immediately and came in to give us the assurance that they could handle this basic problem with a minimum amount of cost.

Our first major project equaled something in the neighborhood of $300,000. Our last estimate was right at $1 million to remove from boilers, steam pipes, et cetera, and we only have 21 buildings.

And out of those 21 buildings, most of those would probably contain a certain amount of asbestos. But by the same token, we want you to know that the local school districts around the country are trying to accomplish removal.

We're also trying to comply with the AHERA guidelines, but we also support the delay because there are some problems out there and we want to make sure that the process is conducted right because the amount of money that has been spent on asbestos up to this point is monumental if you consider all of the school districts in the country and the amount of asbestos that had to be removed.

We have to keep in mind that most of our buildings are aged and those buildings that were built earlier are almost certainly going to have asbestos somewhere in the building because that was the major insulation at that time.

We are in the process of trying to get this job done, and we hope that we do not complicate the process by legislation that's going to prohibit us from doing it rather than enabling us to get it done.

In terms of technical assistance, we believe that Congress should consider the implementation of a national information system that will provide specific information to people on an individual basis so they can write in and get the information regarding what is necessary in order either to remove or to provide the guidelines for them to put together their plan that will provide them with the assistance in complying with the guidelines.

In terms of insurance and bonding, contractors in some cases are not allowed or cannot get insurance and bonds based on the State law.

Alternatively, those licensed asbestos contractors who are unable to obtain this are prohibited from bidding on those contracts which inhibits the ability of local school districts to get someone to come in to provide this removal.

The impact of this exclusion is it would reduce the number of people available to us and it's going to cause us some problems in terms of implementation and also in terms of preparation of the plan.

We would like to have the opportunity to submit some additional information we're collecting, State-by-State information on the problems with implementation, as a justification for the delay and a request for the delay.

State school board associations are working on this information and we're going to collect it from them. One of the things that I brought with me so that we would be able to demonstrate is the fact that in our State of Missouri, there are six seminars that are set up across the State that will inform our districts, by region, as to how they can comply with the AHERA guidelines.

So we're trying to get the information out by State to make sure that the districts are familiar with the reasons and justifications behind the compliance.

The NSBA written testimony that we have submitted hopefully will give you an idea of the kinds of problems that we're dealing with in terms of implementation and I would be happy to answer any questions that you may have afterward.

[The prepared statement of Mr. Oglesby follows:]

NSBA

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TESTIMONY

on behalf of

THE NATIONAL SCHOOL BOARDS ASSOCIATION

on

AHERA IMPLEMENTATION

before the

SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
of the
COMMITTEE ON GOVERNMENT OPERATIONS

U.S. House of Representatives
2203 Rayburn House Office Building

June 1, 1988

Presented by

James R. Oglesby
President-Elect, NSBA

Also present for NSBA:

Thomas A. Shannon
Executive Director

Michael A. Resnick
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I. INTRODUCTION

Mr. Chairman, the National School Boards Association (NSBA) is a federation of the 49 State school boards associations and the Boards of Education of Hawaii, the District of Columbia, and the U.S. Virgin Islands. In turn, through its federation members, NSBA represents the over 97,000 locally elected and appointed school board members who are responsible for the governance of local public school districts nationwide.

NSBA at once commends the Chairman for scheduling this hearing far in advance of the July 9, 1989 **AHERA** implementation deadline, and for extending to us the opportunity to describe the hurdles local school districts must overcome to comply with **AHERA** implementation, as well as actions available to the Federal Congress which would mitigate against future school district non-compliance.

In recognition of the fact that our time here today is limited, I shall speak in general terms, and refer the Subcommittee to the extension of our remarks for a detailed analysis of my remarks.

Turning first to **AHERA** financing, as you know, statutory compliance with the unfunded **AHERA** mandate is the responsibility of **individual** local public school boards and the districts which they represent. In that regard, no Federal legal obligation was imposed on a unit of State or local government - **other than local school districts** - to either implement **AHERA** or to finance the estimated $3 billion (nationwide) cost of implementation.

In general, school districts must undertake financing of projects like **AHERA** either as part of their annual budget, or as a capital construction project.

The funding of local public school district budgets is inextricably tied to a combination of factors outside the control of the local school board. Those are: State statutes, State legislative action, local law, and voter approval. Moreover, the significance of any one of these factors varies from State to State and school district to school district based on a combination of State and local laws unique to any one district. Because this is so, many local school boards are unable to predict, beyond their current budget cycle, the availability of funding for educational services, or compliance with the unfunded Federal **AHERA** implementation mandate.

Alternatively, the financing of capital construction projects through voter approved borrowing must be undertaken with reference to both State statute and the **Federal Tax Code**. State law governs the ability of a local public school district to enter into long-term indebtedness through issuance of a tax-exempt bond or as an obligor on a negotiable instrument. The **Federal Tax Code** regulates the conditions under which the underlying obligation will be viewed as tax-exempt. However, in many States, capital construction project financing is available only for new construction and is therefore unavailable for for **AHERA** implementation.

The unpredicatable nature of local public school district budget funding and capital construction project financing is exemplified by the current situation in the Chairman's home State of Oklahoma.

Under Oklahoma statute, funding of AHERA implementation must flow from a school district's annual budget. Prohibited by State law from increasing local tax rates, school districts in Oklahoma must depend on legislative appropriations to fund approximately two thirds of their annual budget.

Nevertheless, Oklahoma law mandates that public school districts establish a budget for the following fiscal year by September 1, and obligate the single largest budget line item expenditure, teacher salaries, by April 10 ... notwithstanding the fact that the legislature often does not act on appropriation measures until mid-summer.

Thus, for Oklahoma school districts, a reduction in State appropriations may result in the absence of funds for any additional projects, including AHERA implementation.

The inability of a local school board to make an **independent** determination to fund AHERA implementation by issuance of tax-exempt bonds, or through long-term debt financing on a negotiable instrument is not unique to Oklahoma. In fact, NSBA believes that the financial hurdles to AHERA implementation faced by Oklahoma school boards are common to many public school districts across the nation.

One of the principle reasons espoused for enactment of AHERA was the lack of a **national** standard to address the **national** asbestos hazard in schools. However, AHERA failed to recognize that implementation of that standard was based on an incorrect assumption. That is, that each local public school district, as a legal matter, was independently capable of financing this Federally unfunded mandate.

Because many local public school districts do not have the legal authority to borrow funds to finance **AHERA**, compliance with this mandate will remain unpredictable unless the Federal Congress is willing to extend to each local public school district the legal ability to access **AHERA** financing, notwithstanding State and local law to the contrary. In that regard, and in recognition of Federal budget constraints, NSBA proposes that the Congress consider Federal legislation to allow the establishment of a national, privately financed tax-exempt bond pool, the proceeds of which would be available to all local public school districts for expenditure on **AHERA** compliance.

NSBA believes that Federal extension to each local public school district of the **legal authority** to finance **AHERA** implementation is at once indispensable to the national **AHERA** implementation mandate and compatible with the Federal assumption that the cost of implementation should ultimately be born by the taxpayers of each local public school district.

II. TECHNICAL ASSISTANCE

AHERA implementation will necessarily result in a significant number of complex questions susceptible to a range of varying response actions. Because this is so, NSBA believes that Congress should begin now to devise a viable system for local school districts to access uniform technical assistance and implementation guidance.

Therefore, NSBA urges Congress to consider implementation of a national information system capable of responding to specific implementation inquiries in writing on an individual basis. NSBA believes that such a system would both ensure that a local school district would undertake the most appropriate response action, and assure that school districts will at all times have the type and quality of uniform technical assistance and guidance they need to be in compliance with AHERA.

III. INSURANCE AND BONDING

In general, both insurance coverage and contractor bonds exclude coverage for asbestos-related activities. For local public school districts, the problems posed by this general exclusion are twofold.

First, in many jurisidictions, State and/or local lawS require that units of government may accept bids only from bonded contractors who can show a minimum dollar amount of insurance coverage. Alternatively, those licensed asbestos contractors who are unable to obtain both a bond and adequate insurance coverage find that they are also precluded from bidding school district contracts for AHERA implementation.

The impact of this exclusion is to at once reduce the number of qualified contractors available to local school districts for AHERA implementation, and to create market conditions which favor some school districts over others.

State school boards associations across the country have attempted to address this problem by the establishment of both insurance pools which extend coverage for asbestos-related activity undertaken "in-house," and

AHERA implementation pools which provide bonded and insured contractors for each school district which participates in the pool.

However, creation of these pools is also subject to State and local law. Therefore, absent State legislative changes, or Federal law which pre-empts State/local law to allow these activities, they will remain unavailable in many States.

IV. CONCLUSION

The NSBA written testimony addresses a number of additional issues raised by implementation of AHERA including State and local laws governing school district contracting procedures. However, NSBA believes that a resolution of those issues will be forthcoming if the three most significant obstacles to school district compliance (financing, technical assistance, and insurance/contractor bonding requirements) are addressed by the Congress prior to July 9, 1989.

Mr. **Synar**. Thank you, Mr. Oglesby. I appreciate it. I'll tell Theo Smith from Broken Arrow you mentioned her name in this and got her on the record. She'll appreciate that.

Mr. Kitchen, we're glad to have you. You are a school board member yourself from Johnstown, NY. We look forward to your testimony. Your entire testimony will be made part of the record and at this time we'd ask you to summarize.

And without objection, we'll allow the record to remain open so you can include that information you mentioned.

Mr. Kitchen.

STATEMENT OF BILL KITCHEN III, MEMBER, JOHNSTOWN, NY, SCHOOL BOARD

Mr. **Kitchen**. Mr. Synar, Mr. Kyl, I really appreciate the opportunity to speak here today. My name is Bill Kitchen.

My interest in asbestos stems from my position as a member of the Johnstown, New York, School Board and also as a construction worker who has been exposed to asbestos in the past and undoubtedly will receive more exposure in the future.

My interest increased quite a bit last fall because of a friendship I began with a woman named Teresa Catucci. Teresa died last month at age 39 from mesothelioma.

Mesothelioma, as you probably know, is a cancer of the lining of the lung which is only caused by exposure to asbestos.

Teresa left behind a husband and two teenage children. Despite a great deal of effort, no one has been yet able to pinpoint where her exposure came from.

It was not occupational. Everyone involved in the case believes that the exposure must have been incidental and fairly low level.

There are thousands of people, including children, who have died from nonoccupational, low-level exposure. This fact must be understood by, and taken seriously by, the people who are planning and doing the work necessary to make our schools asbestos safe.

Otherwise, all our time, effort, and money is a waste of time at best or counterproductive at worst. Asbestos is everywhere and eventually we must confront this problem in many settings.

Schools are the right place to begin and AHERA is a sensible and responsible piece of legislation. However, in its final form, I feel very strongly that AHERA has become a blueprint for disaster.

The main problem is that it doesn't encourage educating and involving people in the process who have the most self-interest in health and safety issues, such as parents, teachers, and custodians.

AHERA has set up a situation where the group that is calling the shots is the newly created group of asbestos consultants and removal contractors.

These people are, by and large, not at all driven by health and safety considerations but by economic considerations, and it is their economic self-interest, not the school districts', which concerns them most.

School boards everywhere see asbestos as just one giant nightmare. Their first reaction is to hire some outside expert to "get rid of the problem."

Once a dollar amount is agreed upon, they simply want the inspector, management planner, or removal contractor to get into the building and get the job done.

Whether or not the job is done right is not of primary concern to either school boards and administrators or consultants and contractors.

School boards mainly are concerned with being in compliance. Consultants and contractors are concerned with being paid.

The people concerned with health and safety are not a part of the process. Unfortunately, they may be the first to know in 20 to 50 years if work was not properly done and mesothelioma is the result.

Most people agree, and it has been well documented and publicized, that a serious problem exists concerning the quality of work being performed by consulting and contracting companies.

In Johnstown, we know of this problem all too well. We hired a firm out of Troy, NY called ENTEK, that on paper looked like the best money could buy.

The president of ENTEK, Roger Morse, was one of 24 people nationwide to be on the AHERA rulemaking committee. The vice president, Dr. Robert Sawyer, is a leading EPA consultant and has helped write some of the Agency's asbestos guidance documents.

At great expense, they provided us with an inspection report that neglected to mention significant amounts of severely damaged asbestos in many different locations.

And yet they were recommending that we remove other asbestos that was as hard as a rock. In fact, it turned out that they had not even tested some of the material they were recommending we remove, and when we tested it, we found out it did not even contain asbestos.

After we complained about the inaccuracies in the first inspection report, Roger Morse himself came to Johnstown with three other people and spent a weekend reinspecting our buildings.

ENTEK asked that all copies of the original report be returned and they issued a second report that looked quite a bit different than the first.

However, even the second report didn't mention a great deal of asbestos including loose, fallen asbestos on the floor in a room that had a large fan in it and also served as a return air plenum.

We have since worked with two other consultants and two removal companies and have had a bad experience with all of them.

Last summer, we needed a small removal job done. We hired a consultant to oversee the job. We told him we wanted an independent monitoring firm to be onsite at all times to make sure the removal was being done properly.

When I showed up at the jobsite, I found that workers had neither sealed the work area off from the student-occupied area, nor set up a negative air system within the work area.

Workers were bringing bags of asbestos up from the basement and piling them in the classroom area. They were in the work area without respirators and the clean area with their contaminated suits on.

When I asked to see the person from the monitoring firm who was supposed to be preventing this sort of activity, I was told he had gone out to lunch.

We were quite upset. We called our consultant and he said he could not understand it. He said he'd worked with these firms for years and never had any problems.

He said he would stay on the jobsite himself and make sure everything got cleaned up right. After he assured us that he had done a final inspection and everything was clean, we went into the school and found a great deal of asbestos still left behind, some of it as big as 50-cent pieces.

I have attended EPA courses and become certified as an abatement worker, supervisor, inspector, and management planner.

I have seen the lackadaisical attitude taken by many course participants. They joke about the health concerns and make comments like "we're going to be laughing all the way to the bank."

It's not surprising that the participants do not take the course seriously since the courses themselves do not approach the subject matter in a serious way.

At one of the courses, one of the principal lecturers told a few of us over coffee that he did not think the health concerns were serious and that this whole thing was a waste of money.

EPA will probably say this is an isolated incident and not the Agency's position. However, one of the medical reports that EPA hands out to each course participant is written by ENTEK's own Robert Sawyer, and in it he espouses the industry viewpoint that there is a safe level of exposure, that chrysotile is not a problem, and that the exposure level in most buildings is negligible.

If this is the message that is getting out, it is no wonder that school board members and administrators feel justified in sweeping this issue under the rug and that contractors and consultants try to cut corners.

People who teach these courses tell me that they are very concerned about the quality of the individuals they are certifying.

Some of these people feel the quality of the courses are so poor that they refuse to participate any more. If AHERA is to solve more problems than it creates, these courses must emphasize to people, in a way which isn't done now, that they need to perform their work correctly because the results of shoddy work could be deadly.

And we must also educate parents, teachers, and custodians in the same way, and then give them an important role in overseeing how asbestos work is planned and carried out in the schools they work in and send their children to.

The lack of concern for health and safety issues that is currently held by many people in the asbestos abatement field is unfortunately a reflection of the attitude that the current administration takes concerning asbestos.

Last fall while attending an open house in one of our elementary schools, I noticed that the first grade classroom was full of what looked like smoke.

When I stuck my head in the room to see what was burning, I instead found that the smoke was really dust and it was all coming from a sandbox.

Each time the boy at the sandbox put a shovel full of sand in a pail, a very visible cloud of dust rose up into his breathing zone.

He had managed to fill the entire room with this dust. A few days later, I read a newspaper article that said the particular brand of play sand that was in that room contained asbestos.

The New York State Health Department later said that this play sand created an atmosphere that was more contaminated with asbestos than any other ever tested by that lab.

The contamination level was on a par with a house that had been grossly contaminated with asbestos as a result of sanding asbestos floor tile.

Several other labs have tested the sand and found it to contain long thin fibers of tremolite asbestos. Drs. Irving Selikoff, William Nicholson, and Phil Landrigan of the Mt. Sinai Medical Center all agree that children should not be playing with this sand.

The Consumer Product Safety Commission has been aware of this situation for over a year and a half and yet asbestos contaminated play sand is still being sold.

In 1986, after studying the issue for many years, OSHA concluded that tremolite was dangerous and should be regulated like all other asbestos.

Under heavy pressure, OSHA decided to delay a final ruling on this matter until July 1988. I recently became aware of a letter—in fact saw it this morning—which indicates that in February 1988, OSHA told industry representatives in a private meeting that the decision had been made to drop tremolite from the asbestos standard.

This is happening despite the fact that study after study has shown that workers who are exposed to this tremolite—which is the same fiber that these children are inhaling when they play with the play sand—have experienced abnormally high rates of asbestos related disease and death.

The New York State Department of Health has recently reported that cases of asbestos related disease and death in the area of New York where this tremolite is mined are vastly underreported.

Someone has put heavy pressure on OSHA to cause them to do a complete about-face in the last 2 years. At one of the EPA courses I attended, a fairly high ranking OSHA official said that OSHA is really run by a bunch of lawyers and accountants from OMB.

Another example of EPA's lack of real concern about the dangers of asbestos is that it still has not taken action on the 10-year phaseout proposal.

Next year will be the 10th year since that proposal was first introduced. The 10-year phaseout plan has become the 20-year phaseout plan.

When an ambulance is called to the scene of an accident, the first thing the technicians do is stabilize the situation before they treat the injuries.

We now realize that we have had a head-on collision with asbestos. Yet, we haven't stabilized the situation. At a time when we spend millions to treat the injuries by removing asbestos and putting it back into the ground, we also remove tons of asbestos from the ground and put it into products that will lead to future contamination.

Perhaps the cruelest policy of all relating to asbestos is the way it's being pushed on Third World countries at alarming rates and in ways that would be illegal in this country and Canada.

If we can't, with all our technology, handle this mess we find ourselves in, how can we possibly expect these Third World countries to be able to handle the problem.

I'd like to submit a more detailed statement and support documents for consideration by the subcommittee, for inclusion in the record.

Thank you.

[The prepared statement of Mr. Kitchen follows:]

TESTIMONY OF MR. BILL KITCHEN III

BEFORE THE ENVIRONMENT, ENERGY, AND

NATURAL RESOURCES SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

June 1, 1988

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Asbestos is everywhere and eventually we must confront this problem in many settings. Schools are the right place to begin and AHERA is a sensible and responsible piece of legislation. However, in its final form, I feel very strongly that AHERA has become a blueprint for disaster.

The main problem with it is that it doesn't encourage educating and involving people in the process who have the most self-interest in health and safety issues, such as parents, teachers and custodians. AHERA has set up a situation where the group that is calling the shots is the newly created group of asbestos consultants and removal contractors. These people are, by and large, not at all driven by health and safety considerations, but by economic considerations. And it is their economic self-interest, not the school districts', which concerns them most. School boards everywhere see asbestos as just one giant nightmare. Their first reaction is to hire some outside expert to "get rid of the problem." Once a dollar amount is agreed upon, they simply want the inspector, management planner, or removal contractor to get into the building and get the job done. Whether or not the job is done right is not of primary concern to either school boards and administrators or consultants and contractors. School boards mainly are concerned with being in compliance. Consultants and contractors are concerned with being paid. The people concerned with health and safety are not a part of the process. Unfortunately, they may be the first to know in 20 to 50 years if work was not properly done and mesothelioma is the result.

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The lack of concern for health and safety issues that is currently held by many people in the asbestos abatement field is, unfortunately, a reflection of the attitude that the current administration takes concerning asbestos.

Last fall while attending an open house in one of our elementary schools I noticed that the first grade classroom was full of what looked like smoke. When I stuck my head in the room to see what was burning, I instead found that the smoke was really dust and it was all coming from a sandbox. Each time the boy at the sand box put a shovelful of sand in a pail a very visible cloud of dust rose up into his breathing zone. He had managed to fill the entire room with this dust. A few days later I read a newspaper article that said the particular brand of play sand that was in that room contained asbestos.

The New York State Health Department later said that this play sand created an atmosphere that was more contaminated with asbestos than any other ever tested by that lab. The contamination level was on a par with a house that had been grossly contaminated with asbestos as the result of sanding asbestos floor tile. Several other labs have tested this sand and found it to contain long, thin, fibers of tremolite asbestos. Drs. Irving Selikoff, William Nicholson and Phil Landrigan of the Mt. Sinai Medical Center all agree that children should not be playing with this sand.

The Consumer Product Safety Commission has been aware of this situation for over 1 1/2 years and yet asbestos contaminated play sand is still being sold.

In 1986, after studying the issue for many years, OSHA concluded that tremolite was dangerous and should be regulated like all other asbestos. Under heavy pressure, OSHA decided to delay a final ruling on this matter until July 1988. I recently became aware of a letter which indicates that in February 1988 OSHA told industry representatives, in a private meeting, that the decision had been made to drop tremolite from the asbestos standard.

This despite that fact that study after study has shown that workers who are exposed to this tremolite, which is the same fiber that these children are inhaling when they play with the play sand, have experienced abnormally high rates of asbestos disease and death.

The New York State Department of Health has recently reported that cases of asbestos related disease and death in the area of New York where this tremolite is mined are vastly underreported.

Someone has put heavy pressure on OSHA and caused them to do a complete about-face in the last two years.

At one of the EPA courses I attended a fairly high ranking OSHA official said that OSHA is really run by a bunch of lawyers and accountants from OMB.

Another example of EPA's lack of real concern about the dangers of asbestos is that it still has not taken action on the 10 year phase out proposal. Next year will be the 10th year since that proposal was first introduced. The ten year phase out plan has become the 20 year phase-out plan.

When an ambulance is called to the scene of an accident, the first thing the technicians do is stabilize the situation, before they treat the injuries.

We now realize that we have had a head on collision with asbestos. Yet we haven't stabilized the situation. At a time when we spend millions to treat the injuries by removing asbestos and putting it back in the ground, we also remove tons of asbestos from the ground and put it into products that will lead to future contamination.

Perhaps the cruelest policy of all relating to asbestos is the way it is being pushed on Third World countries at alarming rates, and in ways that would be illegal in this country and in Canada. If we can't, with all our technology, handle this mess we find ourselves in, how can we possibly expect these Third World countries to be able to handle the problem?

I would like to submit a more detailed statement and support documents for consideration by the Subcommittee for inclusion in the record.

Mr. SYNAR. First of all, before we start the questioning, one of the things that I enjoy about being a Congressman is that I tell my people back home the experts aren't in Oklahoma City or in Washington, DC. Mr. Kitchen, you have more than adequately demonstrated that again today.

For those of you who are not aware, Mr. Kitchen came to the subcommittee yesterday and literally had a hundred page statement, detailing very clearly the problems that he in his position as a school board official has detailed. Obviously, we don't have time for that. Mr. Kitchen spent the entire day yesterday in the cafeteria here in Rayburn getting it down to seven pages.

It is a credit to you and to your community that people like you serve in your capacity and I am very honored that you could be with us today because I think you have portrayed the story probably as well as anybody we'll hear from what school board officials are trying to do to deal with the problem, but more importantly the sensitivity they have to the severe problem. Unlike a lot of school board officials, you have gone right in, rolled up your sleeves and tried to figure out what the problem is, so I commend you for that and I appreciate what you have done.

Mr. Oglesby, your message today is one that we have heard before. Any Member of Congress who's been lobbied by the National School Boards Association, and that is that you face severe problems with respect to meeting the AHERA guidelines. Let me ask you a question. Do you have any indication that a local school district anywhere in the country was not aware of the law's requirements?

Mr. OGLESBY. Almost certainly there are a number of them that were not aware of it until much later, fairly recently as a matter of fact. You have to understand that some of the school districts in the country don't really care about what goes on in Washington as long as they can provide things for their local school district.

As a matter of fact, they have had so much bad legislation until they are surprised when they get a piece that sounds pretty good, so therefore when the attention is brought to them that asbestos is a carcinogenic that is going to cause a problem, usually the parents and the community go in and they raise the issue with them, and that causes them to get on the phone and call some people. That is where the problem starts, because there is very little clear definition as to what is to be done, what can be done, and, as was pointed out, some of the problems have been caused by people calling people and getting misinformation.

What we are trying to do through the seminars and the hearings that we have around the country is to invite people in and to take the message to them. We've decentralized this so that people in local school districts will become familiar with it, because we are taking the message to them.

Mr. SYNAR. This law's been enacted for 2 years now. Why do you think the school boards weren't aware of it?

Mr. OGLESBY. We were aware that the law was there. The specifications in terms of the guidelines——

Mr. SYNAR. Go back to my original question, which was, is there any indication that any school board wasn't aware that the law existed and the requirements? If so, why was that?

Mr. **Oglesby**. Information.

Mr. **Kitchen**. Can I say something about that? I know that you both are very concerned about this matter and you want to do what's right, and when people hear a school board member talk about wanting to change this date, their reaction is "oh, boy, he just wants to delay this and push it under the rug again," but the situation is this: There has been so much misinformation, so much bad information, so many different ideas, and when this law came down, we knew it was going to be it.

School boards were not about to take any actions until they knew what it finally looked like. I was saying a year ago, "I am going to go in and inspect these buildings" and then we started to talk around about what lab could we go to, and exactly how do we have to do the inspection? I thought "I am not even going to begin the inspection now, because I'll end up having to do it all over again." So we waited until the final regulations came out.

I got a hold of them as soon as they came out. I went to an all night diner, got a pot of coffee, and tried to go through them. I got a little ways into it and a lot of it was garbage, I thought, in its final form. It didn't make sense to me. It was confusing. It took State education departments months to go through all that with their people, and to then hold conferences with local school boards to explain it to them.

Now we are at a stage where within 5 months we have to come up with this management plan, and what is bad about this situation is that this is a one-time master plan. When this plan is on line, that's it. You're not going to get school boards to go back and do this again, not right away. They are going to put some effort into it this time, but if somebody tells them a year from now we did it wrong and we have to do it again, they are going to throw up their hands.

This is a one-time management plan. This inspection really needs to be done right, and yet when you look at who is doing it—school boards—I know what they're doing. They are saying give me a consultant, give me an ENTEK. I want to hire them and have it done.

Mr. **Synar**. As your experience shows, those consultants and people who are "the experts" don't necessarily do an effective job.

Mr. **Kitchen**. Right. Your earlier point was a correct one. In fact, it is not that difficult to inspect a building and figure out what to do but I think we need to educate people that have a self-interest in health and safety, about some of these basic issues, and have them at least oversee the inspection and management process.

Mr. **Synar**. Let me ask you about the second phase, I mean the planning obviously is, as you point out, coming on line in 5 months. The real dollar effect is going to be the actual abatement itself, and Mr. Oglesby, you recommended in your statement, if I'm correct, a Federal pool of tax exempt bonds and to authorize local school boards to use those funds. Let me ask you this, is this the only way to finance these projects in your mind?

Mr. **Oglesby**. The dollar value of the removal is so tremendous that it is going to take a multiple of funding opportunities in order to get this done. This is just one of those opportunities. Of course, local school districts will be able to do some of that on their own as they pass levies and utilize those moneys. There are going to have to be some State law changes also that will enable the districts to use some of the resources that they have in the district to remove that asbestos. It is going to take multiple sources of revenue in order to get this done.

Mr. SYNAR. Thank you, Mr. Oglesby.

Mr. Kitchen, let me conclude with going back to something you said, and I was very interested in it. You took the extra time to go on an accreditation course on this. Tell me about that course, because that supposedly is the way that we get these people accredited to deal with this problem.

You gave a pretty bleak picture. Can you tell us about that EPA accreditation course and the type of people that are attending and the type of qualifications one leaves with after attending?

Mr. KITCHEN. Well, I have known people that have come out of those courses certified who have not gone there to get into the business. They have gone there simply to become more aware—for instance, school district administrators have come out certified and have told me that if they went into a school district they would have no idea where to begin.

Mr. SYNAR. Even after attending the course?

Mr. KITCHEN. Even after getting certified to be able to go in and do this work.

Mr. SYNAR. How long do those courses last, Mr. Kitchen?

Mr. KITCHEN. The inspector course is 3 days and you go 2 more days and you become a management planner.

Mr. SYNAR. Five days.

Mr. KITCHEN. Right. Now, you know, a few administrators will go and have the school district pay their way, but the people that are putting down $500 of their own money to do this aren't doing it just because they want to learn about asbestos. They are doing it because then they are going out and getting hired by school boards to come in and do up these management plans.

They joke in those courses, and like I say, it is a reflection of the attitude that comes down from the top. We are not talking about schools that have snow storms of asbestos. We are talking about a low level exposure, and yet there is not emphasis that somebody like Teresa Catucci and many others die from low level exposure.

It is a problem in not emphasizing health and safety and it is also a problem of who they are teaching this information to. They are not giving it to people that have a self-interest in health and safety.

Mr. SYNAR. Thank you, Mr. Kitchen.

Mr. Kyl.

Mr. KYL. Thank you, Mr. Chairman. I want to thank both of you gentlemen for bringing a very important perspective to this entire debate.

I'd like to begin by telling you that I think Congress is here imposing a double standard, that we are saying do as we say, not as we do. Congress would still be studying the issue if it were a requirement that we were imposing on ourselves.

We passed a law called the Gramm-Rudman-Hollings law that said we had to get the Federal deficit down to zero by 1991, was it?

Anybody who believes we are going to get it down by 1991 hasn't observed properly the situation up here.

It wouldn't be so bad if——

Mr. SYNAR. You don't need to remind me of that, of all people.

Mr. KYL. Oh, I'm not suggesting that the chairman here is in any way responsible for not getting the job done. We are all to blame here in the Congress, but here—and I might say that one of the reasons that we don't comply with that particular law is that we say, or some of us say, that the results of doing so would be more deleterious than not doing so, that we would upset too many important apple carts, and that in a real way is the situation that I think exists here.

A lot of people are concerned that doing nothing might be preferable to doing something wrong when it comes to disrupting asbestos, and therefore they want to do it right.

Mr. Kitchen, I would disagree with a couple of things that you had to say, and I suspect that you didn't really mean it this way but the generalization that the school boards don't really care about the children I suggest is not something you really meant to suggest, because I think that they do care. They want to do it right, but they are very frustrated that they don't quite know how to do it. They don't know where they are going to get the money to do it, and they need some time, or else (a) they are going to be found out of compliance with the law; and (b) they may do something wrong with a deleterious result such as occurred with you.

That I think is the reason they are asking for the delay, not because they want to get out from complying with the law.

One of the school districts I represent is in an area—and I might say that in Arizona the school districts are supported by the property tax. Well, in one county only 3 percent of the land is privately owned and in this one school district, one-half of 1 percent of the land is privately owned. They have come to me saying what are we going to do? We can't afford this. The State funding level is, as Mr. Oglesby pointed out, something (a) that has its own inherent problems, and (b) it requires leadtime and there is no uniform way that the States have addressed this problem to make funding opportunities available.

There is no way they are going to be in compliance to do the job right, and they have come to me asking what can we do? It seems to me that both of you are suggesting that additional education and support is important in order to make this program work right and I want to compliment Mr. Oglesby for presenting some constructive solutions that might help us get part way there.

If I could focus on those solutions for just a moment here, one of them is to create the privately-financed tax-exempt bond pool. Is this something that has been put into specific form by the School Board Association, or is it simply an idea that you've been presenting to us here?

Mr. OGLESBY. It's an idea and a recommendation and we can put it in specific form. We used this mechanism in various other areas—construction, for example. We do sell bonds and use those resources in order to construct new facilities. In some States, you aren't allowed to do remodeling with those dollars, so therefore we need some flexibility at the Federal and the State level to allow those things to happen, some enabling legislation that would allow it to happen.

When I heard the message coming out of Washington that we are going to get Government off the people's back and then we see legislation coming down like this, it makes us wonder whether or not we are all in the same business. I am trying to provide, and we are trying to enhance the providing of, the best education we possibly can for our kids in the local school district, and when people come to us and they want to know what are you doing to remove asbestos, we need to give them a solution. That is one of the solutions that we need to develop and put in place. I think it is an idea that we can put the technical specifications to.

I want to say also that school boards have been pretty much whipsawed around a lot, so therefore these days whenever there is a recommendation coming down that something should be done, usually we'll wait until we can get the accurate information, because we know that we are only going to have one time to do it if we have to spend some money. We can't do it as we do in private enterprise, where you get the money to spend and then if it doesn't work right then you go in, tear it out and redo it again. Our revenues do not cycle that rapidly.

Mr. KYL. The second suggestion you had was an insurance pool, and I would ask the same question. Is this something that has actually reached the level of a formal proposal?

Mr. OGLESBY. No, in some States there are insurance pools that are put together by the State associations. Each State has the flexibility to develop the insurance pool in which there are certain agencies that come in—I believe one of them is Dave Bosworth—and develop a funding plan for districts that want to develop that insurance pool in order to accommodate the kinds of remodelings, borrowing of money to get to the end of the year and various financing alternatives that districts have had to come up with because the resources were just not there, either from the State or from the local level to provide the basic education program along with the other things that are necessary in order to keep a school going.

Mr. KYL. Has there been a Federal education program developed that in your view, both of you now, has satisfied the requirements or satisfied the needs of the school districts, I should say?

Mr. OGLESBY. Are you talking about specifically this one, or——

Mr. KYL. No, no—have the school boards received the necessary information to go forward and to do the job right?

Mr. KITCHEN. I don't believe they have. You're right, I didn't phrase that well at all. It is not that school board members and administrators aren't concerned about children's health and safety, but they are making decisions concerning asbestos that aren't based on health and safety, and I think that is primarily because the job of educating people about the real dangers of low level exposure is not getting done.

The other thing is that even though school board members and administrators are concerned with children's health and safety, we're all only human and if it becomes too much of a problem we'll cut corners. I can tell you that I think I'm pretty conscientious. Yet

I would have walked away from this a long time ago if it weren't for three special kids that I know of in those schools.

I think you need to involve in the process, and in the decision-making, people who have that kind of immediate self-interest in health and safety and it might not be an administrator that works in another building or a school board member who shows up at a meeting a couple times a month.

Mr. KYL. Just to conclude my time here, it seems to me that the need here is recognized by all, but it has got to be done right or the harm may outweigh the benefit of proceeding rapidly or in haste. Therefore, it seems to me that we need a little bit more time to get this education process underway, to make sure we do have the right kind of contractors available and make that information known to the school boards and then to provide both the financing and the protection mechanisms that you have addressed here. If that takes a little bit more time, then for the good of the kids it seems to me that we ought to grant that time and be less worried about the political problem that may result because we have an election coming up.

I would be pleased to work with both of you and others toward this end.

Mr. KITCHEN. Can I respond to that too? I have talked to some people, some groups that have been at one point unalterably opposed to an extension of the deadline and when I explained my position to them, they have ended up saying "we agree with you completely." I am not talking about putting off action. I am talking about educating people, getting the people with health and safety concerns involved in the process, but the other thing that goes with that is there is no excuse in any school district for not taking immediate action on anything that requires immediate action. This implementation deadline, that's still over a year off, is no excuse for any school board to delay necessary action. In fact, although we haven't got our management plan completed, we have taken plenty of action in the past year to abate bad situations.

In terms of constructive ideas, I think one thing that somehow needs to happen is—I'd like to see an 800 phone number in Washington where I could call in and say, look, if anybody calls and they want a recommendation on ENTEK, tell them to call me.

Mr. KYL. On what?

Mr. KITCHEN. On this company that I referred to in my testimony. There's so much work out there and so few contractors that they can do a bad job and they'll still find work somewhere else. There is really no way for me to check on a company to see if they are good or bad. Now they will give me references and a lot of those references will check out. They won't give me the bad ones. They will give me the ones where the school board has hired them, said here are the keys to the building, here's a check, get it done, get out, and people really have no idea whether the job was done right or not. This happens all too often.

There is not any enforcement taking place at the Federal level. There is very little taking place at the State level and I think the only way to really enforce this is to let people like myself and our school board, who have had bad experiences, be able to make that information available to anybody, because these companies go all over the country. School boards want to know if others have had a bad experience with a company they are about to hire.

Mr. **Kyl**. Mr. Chairman, may I make a request? There were specific allegations made regarding specific companies. I suppose it would be appropriate if in some fashion they were given the opportunity to put something in the record in response. Wouldn't that be appropriate?

Mr. **Synar**. Not really. That is not generally the policy of the subcommittee, to allow people to respond to the record and keep it open. We could keep that thing going around and around.

Mr. **Kyl**. May I ask you, and I don't know these people from Adam, but in the event that somebody wanted to submit a letter within a reasonable period of time that would respond to these points, if that would be all right. I think it would be appropriate.

Just to make this additional observation—I think Mr. Kitchen makes an excellent point. So often there is a need. Congress perceives that need. We pass a law to address that need, but we do it in such a way that the people that end up taking advantage of it are the people who end up supplying the service in one way or another. They may make money off of it, but it ends up costing a lot of people more money than it should. The job doesn't necessarily always get done right and in order to avoid that problem here, I think Congress needs to be very carefully attuned to how we implement this program. Again, therefore, I appreciate the testimony that you've brought forth here today.

Mr. **Synar**. Thank you, Mr. Kyl. Mr. Kitchen, Mr. Oglesby, again we thank you on behalf of Ccngress and also the efforts that you are doing representing your groups, and Mr. Kitchen, particularly you.

At this time we are going to take about a 3-minute break. We are waiting on Congressman Florio, who should be here very shortly, and I need to go make a quorum call. We will be back here in less than 5 minutes, so don't anybody leave.

[Recess taken.]

Mr. **Synar**. The subcommittee will come back to order.

Joining us now is the chief author of the legislation in question today, a good friend of mine and a colleague I enjoy working with immensely, Jim Florio. Jim, thank you for coming today.

STATEMENT OF HON. JAMES J. FLORIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. **Florio**. Thank you very much, Mr. Chairman. I'm pleased to be here and commend you for holding this hearing on the implementation of laws and regulations dealing with the problem of asbestos.

I have a statement that I'd ask to put in the record, and I'll try and go through it as rapidly as possible.

The Congress has to oversee the implementation of these laws with the strictest of scrutiny. There's no environmental hazard which we know more about than the problem of asbestos.

We know that it's life-threatening, and we know from the sad history of the disease and the misery of those who have been afflicted by it how dangerous it is.

The reason we have to pay particular attention to the current laws on asbestos is not only because of the immediate task of addressing asbestos in the schools, although that is of serious concern. We must remember that this is only the beginning.

We put more than 30 million tons of asbestos into public and commercial buildings and other places in this country before we came to our senses and put a stop to that.

Before we're through, we're going to have to inspect the asbestos wherever we find it, and take action when we discover a real danger. The cost of cleanup is conservatively estimated to be in the tens of billions of dollars. Of course, the cost of human health problems can be much more.

The asbestos in the schools legislation, that passed in the 99th Congress with your assistance, not only addresses the most crucial problem first but also can serve as a model for future asbestos actions.

To the extent that the school program is mishandled, however, it may lose its usefulness as a model. That is why we must set it back in the direction that it should be going.

I'll not take the subcommittee's time to recount why we chose to address the schools' problems first. Suffice it to say we did, even with the administration's support—reluctant, I suspect, but nevertheless the President signed the bill into law at the end of the last session of the Congress.

Unfortunately, though, the assistance from the Federal Government, particularly EPA, in implementing this law has been woefully inadequate, and it is making things extremely difficult for schools around the country to try to comply with the requirements of the law and the regulations that were formulated to implement the law.

Let me describe the situation briefly in my own State, that I am, obviously, familiar with. Schools are aware that there is a deadline in October for inspections and management plans, and they're working to comply with the deadline.

But most of them have had little information to assist them. EPA has provided virtually no assistance of any kind.

One school was told by an outside consultant that it would have to spend $200,000 to inspect for asbestos, despite the fact the school was built in 1981, totally asbestos free.

Throughout the State, schools are left to get information from contractors without any independent guidance from the EPA.

Initially, there was a shortage of inspectors because EPA was not holding enough classes to accommodate the requests for the certification process.

The Administrator of the EPA has assured me that more classes have been scheduled recently, and that an adequate number of inspectors will be available imminently—in time, allegedly, for the inspection to be conducted prior to the deadline.

I have suggested to the EPA and to the State agencies in charge of this matter—there are five of them in my State—that they conduct some informational meetings for schools to explain in detail the requirements of the law, what the regulations require, and what schools must do to comply.

One of the unfortunate results of EPA's inaction is that school boards now believe that they need more time to comply with the law's requirements.

And, incidentally, these requirements as you know, did not just come upon us. There have been regulations requiring in the law for inspections in the schools since 1982. In 1986, we put those requirements into specific statutory form, but they have been in the regulations since 1982.

While I oppose an across-the-board extension of the deadline, I've indicated that a waiver procedure, based on individual circumstances and good faith efforts of schools to comply, might be warranted.

I would note that the penalties under the law are civil fines that must be earmarked toward the expense of correcting the asbestos problems at the school that has the fine assessed against it. I would also note that EPA's enforcement policy, as announced, would reassure the school boards that they have no fear of unwarranted fines or penalties.

That is to say, EPA has the discretion of where to set the fine, or even not to apply fines when they find technical violations.

We have known about asbestos exposure in the Nation's schools and the danger it poses to school children for a long period of time. An additional across-the-board delay without any attention being paid to good faith or to unusual conditions would, I think, be inappropriate—particularly a delay based on confusion resulting from a lack of commitment by the Federal agency or the various State agencies.

We face a problem that will eventually cost our country a substantial amount of money; close to $100 billion, when we get close to evaluating the transactional costs as well as the cleanup costs in the Nation, not just for schools, but ultimately for other public buildings as well as commercial buildings.

Handling this problem properly will save lives and billions of dollars. Pretending that it doesn't exist or pretending that we can rationally solve it without committing Federal resources to solve it is just not sensible.

This hearing is a very important step in forcing the agencies to face the fact of the danger, its cost, and the agencies' responsibility to play a leadership role in addressing it, rather than being passive observers.

So, I want to express my appreciation for the opportunity to come and share some thoughts with you, and I'd be happy to try to respond to any questions you have.

Mr. SYNAR. Thank you very much, Jim. Let me just ask you one question.

Your concept of not doing an across-the-board extension is inviting because it clearly points to the purpose behind what we were trying to do, getting serious with this problem and trying to put it on a time schedule.

You didn't hear this morning, but we have already heard, and I'm sure we'll hear some more here, that the States aren't ready, that there is not a cadre of certified people ready to do the types of things that the legislation requires, and, as you clearly pointed out, there hasn't been the financial commitment by the Federal Government to assist that.

Given those three things, would it not be pretty clear that almost any school in any school district would qualify for the waiver under what you call "unusual circumstances"?

Mr. FLORIO. No, I don't think so, Mr. Chairman. First, there should be relatively little trouble in training an adequate number of inspectors. They are much easier to train—I mean, it is not a complicated effort to get someone certified as an inspector, to go make the threshold decision as to whether there is friable asbestos, dangerous asbestos, or not.

The EPA is belatedly in the process now of getting systems set up so that someone in a relatively short period of time can become qualified as an inspector.

Certainly I would be, and I trust most people would be, very apprehensive about providing across-the-board extensions for schools which are determined to have friable asbestos.

In terms of allowing for waivers, there should be some criteria. Certainly the health consequences of what's there or what's not there would be paramount.

Over and above that, proof of a good faith effort to comply ought to be a criterion. Likewise, the availability of contractors, the availability of management plan people, which is not uniform across the country. I would concede that. In some areas, there are sufficient people, and have been sufficient people. That ought to be a criterion as well.

The money question you raised, which is very legitimate, is one, unfortunately, we never intended to address. It's a sad commentary on our values over the last 8 years or so, but this is an aspect of the problem that in some respects the Congress paid lip service to. I think we have been appropriating about $50 million a year to deal with this aspect of the problem.

The School Board Association of my State says it's going to take $76 million to deal with New Jersey's problems alone. So, we have never really intended that this would be a federally-financed program.

As lamentable as that is, the fact is that asbestos cleanup is going to happen. It is already happening. Schools, independently of this legislation, have been removing asbestos.

The major thrust of the legislation, you may recall, was to make sure that what was done was done correctly, so that the cleanup wasn't inadvertently causing more problems than it was curing.

This is primarily a regulatory effort to make sure that there are standards for this work, and to have a certification system so the people who are performing this work know what they've doing.

This is not primarily a financial assistance bill. There are some moneys that are available, but they're nowhere near close to being adequate.

Mr. SYNAR. Mr. Kyl.

Mr. KYL. Thank you, Mr. Chairman. Mr. Florio, I want to commend you for your leadership in this effort and for looking for ways to fine-tune the legislation and make it work as you intended it to work.

The chairman pointed out some of the testimony that we heard this morning. Another bit of testimony was that a lot of the districts are wary of developing a management plan before they really know what they're doing, and they really don't know what they're doing to a large extent, yet.

And, unlike private enterprise, they don't just have money lying around where they can redo it. They have, then, to rebond and all of that. So, they're not likely to be well in compliance by the first deadline.

Let me suggest another approach to this that you might consider, and it's just more in the nature of a suggestion.

EPA has found over the years, in dealing with the Clean Air Act, for example, that when they have deadlines that can't possibly be met and, frequently, penalties that they can't realistically assess, that they've had better success with the development of milestones, where maybe they put off the final compliance date by a period of time, a year or 2 years or something like that.

But, in the meantime, they require reporting that the entity has achieved a certain level or milestone leading up to that, so that they know they're not just going to wait until the next deadline and still be out of compliance.

Given the fact that probably there will be a large number of school districts that are just not going to make it and given the fact that we don't like to impose a penalty where, then, EPA just winks at the violators, might not this milestone approach also be something that you could incorporate in this?

Mr. Florio. Maybe I wasn't clear. I used the word waiver and, presumably, if you're talking about a waiver, there are criteria.

Mr. Kyl. Right.

Mr. Florio. If you want to call the criteria a milestone, I don't have any difficulty with that. I'm just suggesting there ought to be a rational basis for providing exceptions, as opposed to a blank check across the board.

Some have suggested, and I think it is a suggestion deserving of some scrutiny, that the deadline that's coming up is a deadline for the inspection and the formulation of the management plan.

You raise the point, which is a legitimate one in some instances, that the plan can't be put together unless you know what you're planning for.

If we have to take some action in this area, I think there is some value in saying: Fine, the inspection deadline should be retained, because, as I said earlier, this is not something that schools have just been made aware of. This has been the law, the regulatory law and now statutory law, for a substantial period of time.

Likewise, I don't think you can make the argument that there is no time to train an adequate number of inspectors. In many instances schools are trying to get their own personnel certified as inspectors so they have in-house people who know what they're doing.

The inspection process is not as complicated, certainly, as the planning process is, or as the actual removal process is. The deadline for inspection, in my opinion, ought to be retained.

Where there are extraordinary circumstances that would justify some variation from the October deadline for the plan, there may be the need or the desirability of allowing for slippage on the planning mechanism.

Finally, I think it would be feasible to allow some slippage in the deadline for the planning process and still retain the remedial action commencement deadline in July 1989.

So, it may very well be that you can keep the broad outlines of the timetable that we have in current law, and yet provide for some flexibility in the midpoint, where you have to make some hard decisions on what the plan will recommend.

Mr. KYL. If I could just add one other thing. The financing is a problem, and you alluded to that. There are a lot of innovative ideas that have now come about, but time is a factor there, too.

State legislatures are about concluded around the country now They've either finished their work or about to, except in the real big States that do it year around. So, it would be hard for them to get new laws implemented in time. That is, to permit some of the creative financing that has been suggested.

School districts also would have problems in going to the bond market, and there are just time-sensitive factors here.

So, I would just also suggest to you that those be taken into consideration with respect to that second date as well.

But I think, obviously, we're all talking about achieving the same goal in a rational way, and, again, I commend you for your willingness to consider all different kinds of approaches to this in order to make it work.

Mr. FLORIO. Again, I don't want to be beating up too much on the authorities. But the fact of the matter is that EPA has not covered itself with glory in the way that it has tried to inform people about their responsibilities.

We've also had instances—you may have heard of them, as well—where the State agencies have been less than helpful. Where the school board people call up the State health authorities and ask for a list of certified contractors, and the people at the State agency just say, consult the Yellow Pages.

There hasn't been an awful lot of outreach on the part of the authorities to be of assistance to the schools, and that's unfortunate.

In my State, as I said, we have five different agencies that have a piece of the asbestos school cleanup project at the State level. And I've had school officials tell me they've gotten five different answers to the same question, depending upon whom they call in the State.

That's not helpful, either.

Mr. SYNAR. Thank you, Mr. Kyl. Jim, thank you again. We appreciate your testimony here today.

Mr. FLORIO. Thank you very much.

Mr. SYNAR. Our final panel this morning will be Dr. John Moore, Assistant Administrator for Pesticides and Toxic Substances, EPA. He is accompanied this morning by Gerry Emison, Director of the Office of Air Quality, Planning, and Standards; Susan Vogt, Deputy Director of the Office of Toxic Substances; and Mr. Michael Alushin, Associate Enforcement Counsel.

As all of you all know, we swear all our witnesses in, in order not to prejudice past or future witnesses. Do any of you have any objections to being sworn in?

If not, if you'd stand and raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Let me first of all say to Dr. Moore, let me commend you. You got your testimony in on time and in advance. We love that. It gives us a chance. I don't usually get to compliment administration officials, particularly at EPA, so I'm proud of you. I think that's great. Your entire testimony will be made part of the record. At this time we'd ask you to summarize.

Dr. MOORE. With respect to my testimony, Congressman. It was your constructive suggestion the last time I appeared before you that maybe it had as much to do with the timing as anything that I might have done.

Mr. KYL. Excuse me. Mr. Chairman. May I interrupt just one moment here. I've got about 6 more minutes and then I'm going to have to leave. But, and Mr. Clinger was, intended to be here as of 10:30. He may have gotten caught late. May I ask unanimous consent that he be permitted to have a statement and any questions put into the record. I suspect that he had some things that he wanted to cover.

Mr. SYNAR. Without objection. Thank you, Mr. Kyl. Dr. Moore.

STATEMENT OF JOHN A. MOORE, ASSISTANT ADMINISTRATOR FOR PESTICIDES AND TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY GERRY EMISON, DIRECTOR, OFFICE OF AIR QUALITY, PLANNING, AND STANDARDS; SUSAN VOGT, DEPUTY DIRECTOR, OFFICE OF TOXIC SUBSTANCES; AND MICHAEL ALUSHIN, ASSOCIATE ENFORCEMENT COUNSEL

Dr. MOORE. Mr. Chairman. I'd just like to highlight the few points out of my testimony. As you know, EPA's program is designed so that regulatory efforts, technical assistance to States, financial assistance to schools, and enforcement activities when necessary, complement each other, and are coordinated to reduce unreasonable asbestos exposure in buildings. We emphasize strong technical assistance. And our experience has shown that decisions on asbestos are best made at the local level where actual site conditions can be evaluated on a case-by-case basis. AHERA required a variety of activities that I would call major. Not the least of which, and which has been the focus of a lot of the discussions so far this morning, has been the development of a comprehensive framework of inspection, management planning, and operations and maintenance activities, as well as appropriate abatement responses to contain asbestos-containing materials in the Nation's schools. AHERA also required the issuance of a model accreditation plan and a study of other public and commercial buildings.

Those activities are detailed in my testimony. I'd also like to describe two other items that are unfinished business as we sit here today, as it relates to this program. One, we owe Congress an interim and a final report on the availability of liability insurance for schools and asbestos abatement contractors. And secondly, we have not completed our work on the transport and disposal provisions of the AHERA regulation. Both are detailed somewhat in my testimony.

Major effort has been required and is maintained that deals with education and assistance, outreach, to aid those who must comply with the regulation. I've outlined a fair amount of these activities in my testimony. But let me suffice it to say that we have aggressively attempted to get information into the hands of the school districts. For example, for AHERA alone, we have mailed six separate mailings to each of the 45,000 school districts, information dealing with various aspects of the AHERA regulations. In April of this year, we had a national teleconference geared again to those same school districts. Ten States took the feed live, a number of other States probably got the material through, picking it up off of satellite transmission.

We've expended a fair amount of time on courses for accreditation of inspectors, management planners, contractors, and workers. In today's Federal Register, we have an update of agency-approved training courses. Which now number over 240. However, despite those activities, we can't lose sight of the fact that the act states that it is the States in this country, and not EPA, that have primary responsibility for accreditation under the AHERA legislation.

We have worked cooperatively with the State governments. For example, we have worked with the National Conference of State Legislatures to jointly sponsor two AHERA conferences to assist State legislators and State agency officials to discuss AHERA responsibilities and implementation issues and to foster the State accreditation program. We funded the State of Maryland to develop a training program designed to teach State officials how to review these management plans. Maryland is committed during the course of this summer to present that course in six locations throughout the Nation. We have issued interim enforcement policies for those provisions of AHERA that are currently enforceable and now have out in draft form for comment by the regions, compliance strategy for the other sections of AHERA that fall into place later on this year and next year.

We expect that strategy to be final in July. Since last fall, we have awarded grants to 31 States that will give them financial assistance for the inspection and abatement programs that they're required to do. In conclusion, I think that while the focus of this hearing is on AHERA, Mr. Chairman, we can't, I have great difficulty in separating AHERA from the Asbestos School Hazard Abatement Act as well. They are so intertwined in their requirements. They obviously deal with the same activities that I sometimes talk about the two together.

They both had tight statutory deadlines for implementation. We in the main have met those congressionally-mandated deadlines. And have also taken some additional non-mandatory steps to try to assure the effectiveness of the asbestos in schools program. I think the EPA has accomplished this with a modest staff that has worked closely with States and school officials to develop a program that is both responsive and rational.

I'd like to publicly commend the staff within the agency, as well as within the States, for their commitment, which is personal commitment, to make sure that indeed, the AHERA statute is implemented as well as is possible.

[The prepared statement of Dr. Moore follows:]

STATEMENT OF
JOHN A. MOORE
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

JUNE 1, 1988

Mr. Chairman and Members of the Subcommittee, I am pleased to have this opportunity to bring you up to date on the Environmental Protection Agency's (EPA) efforts to implement the Asbestos Hazard Emergency Response Act of 1986, or AHERA. I will also briefly address issues concerning the National Emission Standards for Hazardous Air Pollutants, NESHAPs. Mr. Gerald Emison from the Office of Air and Radiation is here today to answer NESHAP questions.

Mr. Chairman, as I have testified in the past, the goals of EPA and this Subcommittee regarding asbestos continue to be identical. We aim to minimize unreasonable risks associated with inhalation of asbestos by the public, whether it be in school buildings or in public and commercial buildings. EPA's program is designed so that regulatory efforts, technical assistance to States, financial assistance to schools, and enforcement activities, when necessary, complement each other and are coordinated to reduce unreasonable asbestos exposure. We emphasize strong technical assistance activities and active enforcement of existing EPA rules. Our experience has shown that decisions on asbestos are best made at the local level, where actual site conditions can be evaluated on a case-by-case basis. Our program is designed around this practical reality.

As you know, AHERA required EPA to carry out several major activities, including responsibilities to:

-- Develop a comprehensive regulatory framework of inspection, management planning, and operations and maintenance activities, as well as appropriate abatement responses to control asbestos-containing materials in the Nation's schools;

-- Issue a model accreditation plan to provide for training and accreditation either through State-administered programs or EPA-approved training courses for persons who inspect school buildings, develop management plans, or design or conduct response actions; and

-- Conduct a study to determine the extent of danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger.

In my testimony today, Mr. Chairman, I want to update you on the considerable progress we have made in implementing the AHERA schools program, including our outreach program to inform schools and States about AHERA, our efforts to increase the number of trained, accredited inspectors, management planners and asbestos abatement personnel available to carry out the program, and our financial assistance programs. I will discuss the building study we have completed and studies we need to undertake in the future. In addition, I will describe our worker protection rule. I will then comment briefly on EPA's policies governing enforcement of the AHERA requirements, and the NESHAP program. My testimony covers the issues you outlined in your request of May 17.

Before I discuss EPA's accomplishments in implementing the AHERA program, I would like to briefly describe two items of unfinished business in this program. First, we owe Congress an interim and final report on the availability of liability insurance for schools and asbestos abatement contractors. The interim report will be completed in September, and the final report will be completed on schedule in October 1990. Second, we have not completed our work on the transport and disposal provisions of the AHERA regulation. We will complete that provision as part of the Agency's revision of the asbestos NESHAP. The process for completing the NESHAP revision is described later in my testimony.

IMPLEMENTATION OF AHERA SCHOOLS RULE

EPA's final regulations for controlling asbestos-containing materials (ACM) in school buildings under AHERA were published on October 30, 1987, in accordance with the deadlines established by the statute. The regulations require about 45,000 local education agencies (LEAs) to inspect their school buildings for ACM and to develop and submit management plans for each school to their respective States by October 12, 1988. LEAs must begin implementation of the plans by July 9, 1989. This rule covers 107,000 schools nationwide, with each school having some number of individual buildings.

School Outreach Program

Even before the AHERA regulations went into effect on December 14, 1987, EPA began a series of efforts to inform school officials about AHERA requirements. In my entire experience as a Federal manager, I have never seen a larger educational and assistance effort undertaken to aid those who must comply with a regulation. We have mailed information materials directly to every local school district in the country in six major bulk mailings. In November 1987, EPA mailed each of the 45,000 LEAs a copy of the AHERA regulation and EPA's first listing of EPA-approved courses for accreditation. In the Agency's second mailing, one month later, each LEA received a one page alert on immediately enforceable aspects of the new regulation. The LEA Guide, an easy-to-read summary of the AHERA rule that also included practical information helpful to school officials, was mailed to each LEA during February 1988. Included in the February mailing was a second cumulative listing of all EPA-approved training courses. EPA's fourth and fifth mailings occurred in March and included information on the AHERA teleconference which I will discuss in more detail later in my testimony. EPA's sixth mailing to LEAs took place in May. In this mailing, each LEA received a copy of the EPA document, "100 Commonly Asked Questions About the New AHERA Asbestos-In-Schools Rule," as well as an update on AHERA implementation efforts and advice on how to locate accredited personnel.

For parents, students and teachers, we are developing in cooperation with the National PTA and the National Education Association (NEA), a short pamphlet on the AHERA schools rule. Copies will be distributed by the PTA and the NEA.

On April 13, EPA held a national teleconference to help school officials understand the AHERA requirements. The teleconference was aired live on public television in 10 States and was broadcast via satellite at several hundred pre-selected sites throughout the nation. School officials have responded very positively to the teleconference.

In addition, EPA's Regional Asbestos Coordinators have conducted numerous seminars in many States to explain AHERA requirements to school officials. Through these seminars, EPA officials have met face-to-face with hundreds of school principals and administrators to answer questions and provide guidance.

EPA has now established its Asbestos Ombudsman position, as required by AHERA. The Ombudsman has been made part of the Agency's Small Business Ombudsman office, where a quick telephone response mechanism was already in place. The Asbestos Ombudsman is now available to take inquiries from anyone who needs information about AHERA.

Accreditation Efforts

Mr. Chairman, we at EPA fully recognized that a major challenge of AHERA was the training and accrediting of sufficient numbers of inspectors and planners to meet the demands being placed on the school districts by AHERA. In response to that challenge, EPA has substantially increased the number of competent asbestos professionals. In fact, the effort began back in 1985. Beginning in that year we established special training programs for asbestos abatement contractors and workers in five university-based Asbestos Information and Training Centers and three satellite centers to facilitate training in proper asbestos abatement techniques. When AHERA was passed in October 1986, we developed cooperative agreements with these centers to develop and offer new courses to help meet the AHERA requirements for training and accreditation of inspectors and management planners.

In addition to providing accreditation-type training courses through our centers, we also developed and published a Model Accreditation Plan, as required by AHERA. The plan was published in the Federal Register on April 30, 1987. The plan specified the detailed criteria necessary for initial training, examination and continuing education required under AHERA for accreditation for all asbestos management disciplines, including inspectors and management planners, abatement supervisors and abatement workers.

We have developed a system to insure fast, efficient and competent review of proposed accreditation courses submitted to EPA by States or by private training organizations. These procedures include the granting of "interim" approvals for training providers whose courses are generally, but not completely, consistent with the AHERA model. Under "interim" approval, accreditation is granted on an interim basis to all previous students of the course.

In conjunction with the announcement of the AHERA final rule, EPA published last October a list of over 60 approved courses for accreditation of inspectors, management planners, contractors and workers. On February 10, EPA published a second *Federal Register* notice that included over 100 approved courses. Our third *Federal Register* Notice appears in today's *Federal Register* and contains an update of Agency-approved training courses for AHERA accreditation of inspectors, management planners, contractors, and workers. The notice will provide a cumulative listing of over 240 EPA-approved courses, including over 70 courses for inspectors and management planners.

It is ultimately the States, however, and not EPA, that have primary responsibility for accreditation under AHERA. Since 1985, EPA has awarded approximately $2.5 million to 39 States to help develop State asbestos abatement contractor and worker certification programs. To assist the States in meeting the inspection and management plan development requirements of AHERA, we awarded in December 1987 more than $1 million to 17 States to support the development of State training and accreditation programs for inspectors and management planners. These funds will help States develop model inspector accreditation programs in accordance with the new AHERA model plan; ultimately these grants should produce hundreds of additional accredited inspectors and management planners, many of whom are school officials who will serve in that capacity, as permitted in the AHERA regulations. As of May, EPA has approved all or part of nine State programs to give training, administer examinations and provide accreditation for various types of asbestos control professionals. The Agency anticipates several other States will submit applications shortly.

As we did with abatement contractor courses beginning in 1985, EPA has gone beyond the simple requirement of a course and has assured national consistency by publishing model course curricula for AHERA inspector and management planner training. All inspector/management planner course materials are being made available, including the final student manual, instructors guide, overhead slides and 35mm projector slides.

Cooperative Efforts with State Governments

We have worked cooperatively with State governments in the implementation of the AHERA program. For example, EPA has funded the National Conference of State Legislatures (NCSL) to assist States in understanding AHERA's requirements. EPA and NCSL have jointly sponsored two national AHERA conferences for State legislators and State agency officials to discuss AHERA responsibilities and implementation issues, and to foster State accreditation programs. In addition, NCSL has provided technical assistance services to State legislators interested in developing legislation to establish AHERA accreditation programs.

EPA has funded the State of Maryland to develop a training program designed to teach State officials how to review LEA management plans. Maryland State officials will present the course at six locations throughout the Nation during July. State management plan reviewers may attend the training sessions at no cost. Staff of the Connecticut Department of Health who implemented a program similar to AHERA several years ago will also participate as instructors in these training sessions.

Enforcement of the AHERA Regulation

Most provisions of AHERA do not become effective until October 12, 1988, the date inspections must be completed and management plans submitted to the States, or after July 9, 1989, the date LEAs must begin implementation of their management plans. However, there are several provisions of AHERA that became enforceable on December 14, 1987, the effective date on the AHERA regulations, including the requirement that only accredited persons may design or conduct asbestos response actions (i.e., the enclosure, encapsulation, removal, or repair of friable asbestos-containing building material).

EPA has already issued an interim enforcement policy for the provisions of AHERA that are currently enforceable. That policy calls for the Regions, and States with asbestos enforcement grants, to inspect LEAs that are conducting response actions to assure that these response actions are conducted in accordance with AHERA. The interim enforcement response policy calls for the issuance of civil complaints against LEAs and "other persons" (such as, contractors conducting the response action) for violations of the immediately applicable requirements of AHERA. EPA will only issue Notices of Noncompliance (NONs) for certain low-level and minor extent violations identified in the policy (such as, the accredited supervisor was only on the project site some of the time).

Additionally, EPA is developing a Compliance Monitoring Strategy for AHERA. This document, which is currently in internal Agency review, outlines the strategy EPA plans to follow for assuring compliance with all the requirement of AHERA. As reflected in the most recent draft of this strategy, EPA intends to target AHERA compliance inspections, according to a neutral administrative inspection scheme, at both LEAs and persons other than the LEA who perform AHERA related activities (e.g., asbestos inspectors, management planners, contractors who design and conduct response actions, and laboratories performing bulk sample and air sample analyses). EPA also intends to identify and take enforcement action against LEAs that have not submitted a management plan to the States by the statutory deadline of October 12, 1988. We expect the Compliance Monitoring Strategy for AHERA to be final in July.

AHERA Litigation

As a final note regarding the AHERA regulation, you may know, Mr. Chairman, the Agency was sued last fall by former manufacturers of asbestos-containing materials (ACM) over the AHERA regulations. I am pleased to inform you that on May 10 the U.S. Court of Appeals for the District of Columbia denied the petition for review. In upholding the EPA regulations, the Court concluded that "EPA's regulations defining least burdensome response actions, establishing a method by which management plans are to be formulated and implemented, and permitting removal of ACM if school officials so desire represent a reasonable interpretation" of the AHERA statute's demands.

FINANCIAL ASSISTANCE PROGRAMS FOR INSPECTION AND ABATEMENT

Using funds provided through appropriations authorized by the Asbestos School Hazard Abatement Act (ASHAA), the Agency developed the Asbestos Inspection and Management Plan Assistance Program (AIMPAP), which provided $5 million in October 1987 in grants to 12 States for inspection and management plan assistance. These funds were used to reimburse LEAs for hiring inspectors and/or management planners; to purchase the services of inspectors and planners; or to pay accredited State employees to conduct inspections. A second round of funds totalling $11.8 million was distributed to 14 States under this program in April 1988. We were disappointed, Mr. Chairman, that ten States initially failed to apply for funds for their LEAs under this program. EPA provided these States with a second opportunity to apply for the remaining $3.2 million available, which we then distributed to five States on May 27, 1988. In sum, since last fall, EPA has awarded AIMPAP grants to 31 States.

As you know, Mr. Chairman, EPA offers funds for abatement under a program established by ASHAA. ASHAA directed EPA to establish a loan and grant program for asbestos abatement in the nation's public and private elementary and secondary schools. In our most recent round of awards on March 1, 1988, EPA awarded $22.6 million in ASHAA funds to schools across the nation. Since 1985 we have offered almost $157 million in awards to schools with significant asbestos hazard and financial need under very tight deadlines established by Congress.

A report issued in September 1987 by EPA's Inspector General's Office suggested various improvements in the administration of the ASHAA program. We appreciate the review of the program and have implemented several of the recommendations made by the Inspector General (IG). As a result of the IG recommendations, funds are now awarded only for situations where major damage to asbestos is present and the financial need formula has been modified to better target funds to more needy schools.

STUDY OF ASBESTOS IN PUBLIC AND COMMERCIAL BUILDINGS

As I said earlier, AHERA required EPA to conduct a study to determine the extent of danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger.

We found that the asbestos present in approximately 20% of the 3.6 million (730,000) public and commercial buildings in this country represents a potential health hazard which deserves our careful attention. However, as you know, it is not the mere presence of asbestos which poses a health risk to building occupants; the true hazard is presented by damage and disturbance of that asbestos which releases fibers to the air that are inhaled by people.

In addition, we must be careful that we do not stimulate more asbestos removal actions in public and commercial buildings during the next few years than the infrastructure of accredited professionals and governmental enforcement staff can effectively handle.

We need to continue our primary focus on schools where health risk appears highest. Therefore, we have recommended to the Congress that the following steps should be taken over the next three years.

1) Enhance the Nation's Technical Capability

Ideally, owners of public and commercial buildings should use trained and accredited professionals, just as the schools are required to do for inspection and abatement activities. Under the AHERA schools rule, States are now establishing accreditation programs for asbestos control professionals. Since we do not want to divert the limited supply of these professionals from the implementation of AHERA, we need to encourage an increase in the supply of these qualified professionals.

2) Focus attention on thermal system insulation asbestos.

Our report indicates that more public and commercial buildings contain thermal system insulation asbestos than other kinds of friable asbestos. In addition, this thermal system insulation is generally in worse condition and in higher concentrations than the other asbestos found in public and commercial buildings. This asbestos represents a potential health hazard to the custodial and maintenance staff, who work with and around this material on a regular basis. The Occupational Safety and Health Administration (OSHA) recently promulgated standards that reduced the risks to these workers. Finally, in contrast to other kinds of asbestos, thermal system insulation is usually easier to repair, encapsulate, or, where appropriate, remove. We therefore need to develop and provide technical assistance to building owners on how to deal with thermal insulation asbestos.

3) Improved integration of activities to reduce imminent hazards.

More can and should be done to avoid high peak exposures associated with improper or poorly timed asbestos removal activities. It is clear that the recent attention on asbestos in buildings has increased the number of removals, the number of resulting NESHAPs notifications, and the need for additional compliance assistance. A combination of additional Federal inspection personnel and increased State technical assistance in States with delegated enforcement programs could dramatically improve compliance with existing regulations. In addition, States have their own OSHA enforcement activities.

4) Objectively assess the effectiveness of the AHERA schools rule and other activities.

There are approximately 35,000 school buildings which contain friable asbestos, as compared to more than 730,000 public and commercial buildings. As I stated earlier, the health risks appear highest in schools. The total cost of the AHERA program is about $3 billion compared to approximately $51 billion for a similar regulatory program in public and commercial buildings. Federal agencies, States, localities, and the private sector are already active in the assessment and control of asbestos in many of these buildings.

We need to assess the effectiveness of the AHERA schools program in order to enhance our ability to design an effective response to the presence of asbestos in public and commercial buildings. We believe there are a number of studies which merit joint EPA/industry funding and which can be carried out by an independent third party.

WORKER PROTECTION RULE

On July 12, 1985, the Agency published a proposed immediately effective Asbestos Abatement Projects, Worker Protection Rule under TSCA Section 6. A Final Rule was published on April 25, 1986. It applied the requirements set forth in the Occupational Safety and Health Administration Asbestos Standard to those entities not covered by the OSHA Rule, (i.e., State or local governments without a State OSHA approved plan or exemption). In the Rule, EPA announced that it would issue a revised Rule when the OSHA standard was revised to ensure that all public and private sector employees who participate in asbestos abatement projects receive similar levels of protection. OSHA issued a revised Rule with detailed requirements for construction activities, including asbestos abatement projects, on June 20, 1986.

The current Worker Protection Rule, which replaces the previous Final Rule, was published on February 25, 1987, and became effective March 27, 1987.

The Worker Protection Rule covers State and local government employees in those States not covered by the OSHA Rule. Twenty-seven States are subject to the Worker Protection Rule. At the present time the Rule covers those employees who take part in abatement work. However, EPA is considering proposing an amendment to the Rule which would expand the scope of the Rule to include operations and maintenance work involving asbestos.

To implement the Worker Protection Rule, EPA issued a Compliance Monitoring Strategy on September 9, 1986, to reflect the April 25, 1986 Final Rule. An Interim Enforcement Reponse Policy was also issued which directed a Notice of Noncompliance be issued for initial violators of the Rule, and the issuance of a civil complaint for repeat violators. To reflect the revised Worker Protection Rule, effective March 27, 1987, EPA developed a revised draft strategy. This draft strategy has been circulated to the internal and regional EPA offices for comments, the comments have been incorporated, and it is planned that the Strategy will be issued as final within a month. This strategy outlines the actions EPA will take to assure compliance with the Rule, provides a neutral method of targeting inspections, and outlines allocation of responsibilities, including coordination of resources with the AHERA and NESHAPs programs. Work is currently underway to develop a final penalty policy for the Rule. This policy will incorporate the Guidelines for Assessment of civil penalties under Section 16 of the Toxic Substances Control Act.

ENFORCEMENT AND REVISION OF ASBESTOS NESHAP

Mr. Chairman, we are closely coordinating the ongoing effort between the AHERA program and the NESHAP program because they are supportive of each other.

On March 24, 1988, EPA's Inspector General issued a "Consolidated Report on EPA's Administration of the Asbestos NESHAP." This consolidated report was based on reviews of the asbestos programs in Regions IV, V and IX. The final report revealed a number of program deficiencies. In response to the Inspector General's report, and based on the Agency's own review, EPA issued on March 31, 1988 a revised strategy for the implementation and enforcement of the asbestos demolition and renovation requirements. This strategy addresses the Inspector General's concerns regarding EPA and delegated Agency inspection and enforcement programs by establishing inspection procedures, contractor tracking, and enforcement criteria. The Agency expects that the implementation of the strategy will result in a more effective asbestos NESHAP enforcement program.

The proposal of the Asbestos NESHAP Revision was delayed as a result of the need to consider the ramifications of the Vinyl Chloride court decision. The Administrator has recently decided what approach to use in developing NESHAPs. In general, in determining acceptable risk for NESHAP purposes, the Agency would prefer to see estimated maximum individual lifetime risks to the exposed population in the range of 10^{-4} or less. Where the estimated maximum individual lifetime risks exceed this preferred range, the Agency will pay particular attention to the aggravating and mitigating factors present in each case. Included in this examination is recognition that there are considerable uncertainties in risk assessments and that these uncertainties may vary widely among assessments. Work has begun on developing briefing information so that the Administrator can make these decisions on asbestos. We expect that the Asbestos NESHAP revision could be proposed in early 1989.

CONCLUSION

In conclusion, Mr. Chairman, the passage of ASHAA in 1984 and AHERA in 1986 have provided many challenges for EPA. Both laws contained tight statutory deadlines for implementation of programs and development of regulations. EPA has met these Congressionally mandated deadlines and has taken many additional non-mandatory steps to ensure the effectiveness of the asbestos-in-schools program, many of which I have described in my testimony today. EPA has accomplished this with staff that has worked closely with States and school officials to develop a program which is both responsive and rational. I wish to publicly commend our asbestos staff for their success in developing and implementing this important program.

This concludes my prepared statement. I wold be happy to answer any questions that the Subcommittee may have.

Mr. Synar. Thank you, Dr. Moore. We appreciate that testimony and your summary of that. I'll ask unanimous consent that the EPA data showing the number of Federal inspectors for the asbestos, NESHAP program be included in the record, along with this regional map prepared of that data.

[The information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

RECEIVED

MAY 17 1988

Honorable Michael L. Synar
Chairman, Subcommittee on Environment, Energy
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As a follow up to John A. Moore's April 22, 1988, letter to you, enclosed are the final responses to questions 9, 10, 15, 17, 18, 20 and 21. Please note that we included as Appendix I, the detailed breakout by state on the number of full and part time state inspectors (Question 10). Where the regions provided the information, we included the amount of time the part time state inspectors devoted to the D&R program.

In Appendix II we included the materials we have received to date from the regions pursuant to questions 15 and 17. As additional materials are received, we will forward them to you. At the latest, you should receive all materials by May 20.

Sincerely,

Gerald A. Emison
Director
Office of Air Quality Planning
and Standards

Enclosures

cc: Joyce Dain (w/o Appendix II)
Susan Sarason (w/o Appendix II)

Response to Congressman Synar's March 25, 1988 Letter to EPA
Questions 9, 10, 15, 17, 18, 20 and 21

9(a). With respect to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos (renovation and demolition), in each region, how many Environmental Protection Agency inspectors are currently working in the program on a full-time basis?

I	II	III	IV	V	VI	VII	VIII	IX	X	Total
2	2	0	0	0	0	0	1	0	0	5

9(b). In each region, how many currently work on the program on a part-time basis?

I	II	III	IV	V	VI	VII	VIII	IX	X	Total
0	8 (10%)*	7 (17%)	3	14 (45%)	6 (9%)	2 (40%)	0	2 (75%)	6 (22%)	48

*percent means percent of their time working on asbestos D&R program.

9(c). In Fiscal Year 87, in each region, how many EPA inspectors worked on NESHAP asbestos enforcement on a full-time basis? on a part-time basis?

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	1	2	0	0	0	0	0	1	0	0	4
PT	2 (50%)*	8 (10%)	6 (17%)	2 (2%)	12 (20%)	6 (9%)	2 (33%)	0	1 (33%)	2 (5%)	41

*percent means percent of their time working on asbestos D&R program.

9(d). Based on the President's budget request for 1989, how many full time EPA inspectors in the asbestos NESHAP program are projected for FY 1989? how many inspectors will be working on a part-time basis for FY 1989?

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	2	3	0	0	0	0	0	1	2	2	10
PT	0	10	6 (17%)*	12 (23%)	18 (45%)	7	3	1	0	4 (16%)	61

*percent means projected percent of their time working on asbestos D&R program.

10(a). With respect to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, in each region for each state, how many state inspectors are working full time? How many part time?

The following summarizes by region how many state inspectors are devoted to the D&R program full time and part time.. The appendix breaks out this information by state.

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	6 1/4	0	19	12	1	2	0	4	0	9	53 1/4
PT	2 (46%)*	0	35 (30%)	95**	121 (5%)	123	30	6	118**	8	538

* percent means percent of their time working on asbestos D&R program.
**See Appendix I or attachment to Appendix I for percent of time working on D&R.

10(b). How many full time state inspectors were there in the NESHAP program in FY 1987? How many part time?

The following summarizes by region how many state inspectors are devoted to the D&R program full time.and part time. The appendix breaks out this information by state.

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	5 1/2	0	9	10	1	3	0	4	0	7	39 1/2
PT	7 (28%)*	0	27 (3%)	60**	121 (5%)	125	30	14	111**	7	522

* percent means percent of their time working on asbestos D&R program.
**See Appendix I or attachment to Appendix I for percent of time working on D&R.

10(c). How many full time state inspectors are projected for FY 1989? How many part time?

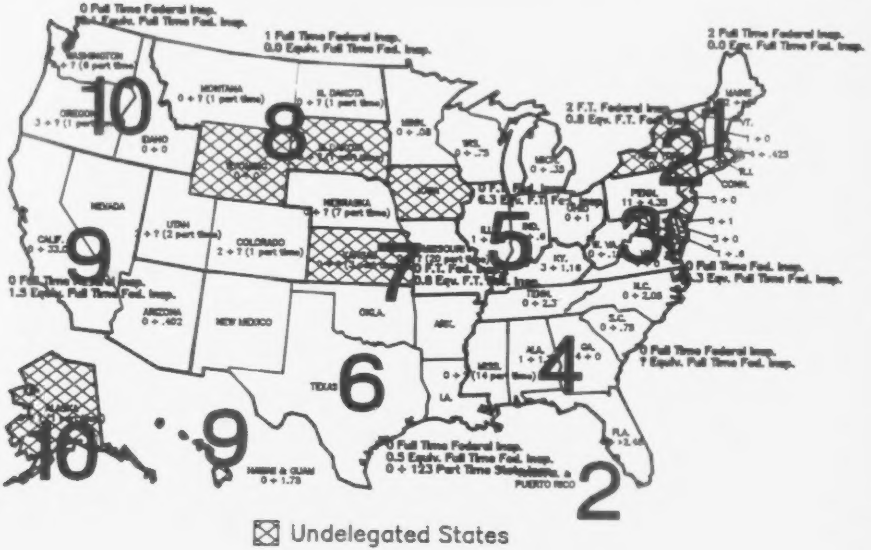
The following summarizes by region how many state inspectors are devoted to the D&R program full time and part time. The appendix breaks out this information by state.

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	11	0	25	14	1	7	0	.4	8	12	82
PT	0	0	41 (30%)*	84**	126 (5%)	133	32	8	123**	10	557

*percent means percent of their time working on asbestos D&R program.
**See Appendix I or attachment to Appendix I for percent of time working on D&R.

National Emission Standards for Hazardous Air Pollutants for Asbestos

FY 88 Inspectors By EPA Region


0 Full Time Federal Insp.
Equiv. Full Time Fed. Insp.
WASHINGTON
+ ? (6 part time)
OREGON
3 + ? (1 part
10
IDAHO
0 + 0
MONTANA
0 + ? (1 part time)
1 Full Time Federal Insp.
0.0 Equiv. Full Time Fed. Insp.
N. DAKOTA
0 + ? (1 part time)
8
NEBRASKA
+ ? (7 part time)
NEVADA
UTAH
+ ? (2 part time)
COLORADO
2 + ? (1 part time)
CALIF.
0 + 33.
9
0 Full Time Federal Insp.
1.5 Equiv. Full Time Fed. Insp.
ARIZONA
0 + .402
NEW MEXICO
OKLA.
ARK.
TEXAS
6
LA.
MINN.
0 + .08
WIS.
0 + .75
MICH.
0 + .35
0 F.T. Fed. Insp.
6.3 Equ. F.T. Fed. Insp.
OHIO
0 + 1
ILL.
1 +
IND.
.6
5
MISSOURI
? (20 part time)
0 F.T. Fed. Insp.
0.8 Equ. F.T. Fed. Insp.
7
KY.
3 + 1.16
TENN.
0 + 2.3
2 F.T. Federal Insp.
0.8 Equ. F.T. Fed. Insp.
2 Full Time Federal Insp.
0.0 Equ. Full Time Fed. Insp.
MAINE
2 +
VT.
1 + 0
4 + .425
R.I.
CONN.
1
2
PENN.
11 + 4.35
3 + 0
0 + 1
3 + 0
1 + .6
W. VA.
0 +
3
0 Full Time Fed. Insp.
.3 Equ. Full Time Fed. Insp.
N.C.
0 + 2.08
S.C.
0 + .75
0 Full Time Federal Insp.
? Equiv. Full Time Fed. Insp.
ALA.
1 + 1.
GA.
4 + 0
MISS.
0 + ? (14 part time)
4
FLA.
+2.44
0 Full Time Federal Insp.
0.5 Equiv. Full Time Fed. Insp.
0 + 123 Part Time State
PUERTO RICO
2
ALASKA
10
9
HAWAII & GUAM
0 + 1.78
⊠ Undelegated States

State Inspectors: a + b
Where: a is the number of full time inspectors
b is the equivalent number of full time inspectors

Mr. **Synar**. You might want to turn a little bit more. I've got a copy of it. Now, Dr. Moore, I think it might be Mr. Emison who may be answering these questions. How many notifications of asbestos removals and demolitions under NESHAP did EPA receive in 1986?

Mr. **Emison**. It was around 50,000, I believe.

Mr. **Synar**. How many?

Mr. **Emison**. Did EPA receive, or did?

Mr. **Synar**. EPA.

Mr. **Emison**. I think it was around 50,000, in the whole program.

Mr. **Synar**. Isn't that the State figure? That's not the——

Mr. **Emison**. You're talking about EPA, per se.

Mr. **Synar**. EPA. Per se. Our number says about 10,996.

Mr. **Emison**. That sounds about right.

Mr. **Synar**. OK. In 1987, how many did you have?

Mr. **Emison**. I'm sorry.

Mr. **Synar**. In 1987? Sixteen thousand, nine hundred and nineteen. Does that sound pretty close?

Mr. **Emison**. Yes, sir.

Mr. **Synar**. We're getting nods behind you.

Mr. **Emison**. They are the people who put the numbers together.

Mr. **Synar**. Now for the first two quarters of 1988, EPA apparently has received 9,206 notifications. So, it's likely that given that trend, EPA could receive more than 18,000 notifications in this year. Is that correct?

Mr. **Emison**. That sounds right.

Mr. **Synar**. All right. Now since EPA estimates that in 50 percent of the cases, the activities subject to NESHAP notifications requirement occur without the required notification, that could make at least 36,000 projects subject to those regulations, is that correct?

Mr. **Emison**. If you were to extrapolate like that, yes, sir.

Mr. **Synar**. All right. Now for fiscal year 1988 there are 5, full-time Federal inspectors, and 48 part-time Federal inspectors doing asbestos NESHAP investigations. Now, counting actual time spent by these part-time inspectors, the number of inspectors is something less than an additional 13 full-time inspectors. Now that means at most, there's probably 15 to 17 Federal inspectors available to respond to what you have just estimated is 19,000 notifications and to look for nonnotifiers.

Now, obviously the natural question here is how can 15 to 17 inspectors do an adequate job covering the entire United States?

Mr. **Emison**. Well, I think there are two points, Congressman. The first is we agree that the Agency needs more resources in this area. And the Administrator has written Congress asking for additional, or flagging additional needs in this area. But I think that we have to look at both the States and our regional offices together because that's really where the whole program is put together. And so the Administrator's request then has involved both States and State grants and EPA money support, EPA staff.

Mr. **Synar**. We're going to look at the State resources question in a minute. Just for the record. Has the Administrator asked OMB for additional money? In his budget request?

Mr. **Emison**. We don't have a budget request, right now. Before.

Mr. **Synar**. For those extra resources?

Mr. Emison. We're between cycles.

Mr. Synar. In the past have you?

Mr. Emison. We're putting together right now. I don't.

Mr. Synar. In the past 3 years?

Mr. Emison. In last year, I don't believe that.

Mr. Synar. What about the year before?

Mr. Emison. I don't recall that.

Mr. Synar. So, in anticipation of the problem, you didn't ask for more resources, knowing what you were going to be faced with.

Mr. Emison. I don't believe we have asked.

Mr. Synar. OK. Thank you. Well, I personally don't believe that 15 to 17 inspectors for the United States is enough. That's obvious. I think all of us sitting here agree. And I'm not sure I know what is enough. I'll be very honest with you, because it's just something that's hard to pin down. I'd ask unanimous consent that the EPA memorandum dated August 17, 1987, be included into the record.

[The memorandum follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

1 7 AUG 1987

MEMORANDUM

SUBJECT: Final Decisions on Distribution of Regional Air Resources for FY 1988

FROM: Gregory J. Glahn
Regional Programs Office, OAQPS (MD-11)

TO: Chief, Air Branch
Regions I-X

We recently learned that a final decision has been made by the Deputy Administrator on the Regional air resource targets for FY 1988.

As you know the Deputy Regional Administrators, in their mid-April conference call, voted to use a proportional rollback instead of the model results for the Regional air management and the air enforcement programs. In response the Office of Air and Radiation recommended to the Comptroller and the Deputy Administrator that the model results be retained. The Office of the Comptroller, following their review of both the Regional and OAR positions, recommended to the Deputy Administrator that the model results be used for the air management distribution and a proportional rollback be used for the air enforcement distribution (modified to provide the rollback after the 3 FTE each for the PM/VOC pilot studies in Regions VI and IX specially funded in FY 1987 were discounted).

We understand the Deputy Administrator elected to go with the proposal formulated by the Office of the Comptroller which allocates the FTE for air management according to the workload model and the FTE for enforcement proportional to FY 1987, including the removal of the 3 FTE from Regions III and IX. There was no change in the monitoring distribution.

Attached to this memorandum is a table showing the final allocations for the three programs and the overall change compared to FY 1987. This action should bring to a close the FY 1988 workload model effort.

If you have any questions regarding the final distribution, please do not hesitate to call John Rasnic or me.

Attachment

cc: G. Emison (MD-10)
R. Campbell (MD-10)
B. Steigerwald (MD-10)
S. Meiburg (MD-11)
R. Cunningham (ANR-443)
J. Kurtzweg (ANR-443)
L. Bockh (ANR-455)
R. Rhoads (MD-14)
D. Tyler (MD-15)
J. Seitz (EN-341)
J. Rasnic (EN-341) ✓

FINAL DISTRIBUTION OF FY 1988 REGIONAL AIR RESOURCES (FTE)

	FY 1987 Distribution				Final FY 1988 Distribution				
Region	Manage.	Monitor.	Enforce.	Total	Manage.	Monitor.	Enforce.	Total	Change
I	24.9	7.7	17.9	50.5	25.1	7.7	17.7	50.5	NC
II	23.2	7.4	33.5	64.1	23.5	7.4	33.1	64.0	- 0.1
III	33.5	10.0	31.0	74.5	31.8	10.0	30.7	72.5	- 2.0
IV	37.5	12.4	33.5	83.4	36.7	12.4	33.1	82.2	- 1.2
V	49.5	15.6	70.4	135.5	50.8	15.6	69.6	136.0	+ 0.5
VI	29.2	9.0	30.2	68.4	27.7	9.0	26.9	63.6	- 4.8
VII	18.5	6.9	15.2	40.6	18.0	6.9	15.0	39.9	- 0.7
VIII	22.7	8.0	13.2	43.9	21.6	8.0	13.1	42.7	- 1.2
IX	40.4	8.9	26.6	75.9	39.9	8.9	23.3	72.1	- 3.8
X	18.9	6.6	12.0	37.5	18.2	6.6	12.0	36.8	- 0.7
TOTAL	298.3	92.5	283.5	674.3	293.3	92.5	274.5	660.3	-14.0

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 9 1987

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: FY 1988 Regional Workload Model Distributions for Stationary Source Compliance, FHA3A

FROM: John S. Seitz, Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: W. Ray Cunningham, Director
Office of Program Management Operation

Attached are the proposed FTE distributions for FY 1988 Regional Stationary Source Compliance.

The FTE distributions are adjusted model run values to implement a Regional minimum of 12 FTE. The workload model run reflects and implements the following budgeting decisions:

- elimination of PST CEM evaluation	6.5 FTE
- increase litigation support	6.5 FTE
- eliminate "hot spot" pilot	6.0 FTE
- decrease State enforcement support	1.0 FTE
- decrease CDS State support	2.0 FTE
- FTE available for distribution	274.5 FTE

Attachment

REGIONAL DECISION UNIT WORK YEAR DISTRIBUTION PROPOSAL

OPERATING YEAR FY 19 88

DATE 3-9-87

A. DECISION UNIT CODE AND TITLE (include PE and ...)
FHA3A-Stationary Source Compliance

B. NATIONAL PROGRAM OFFICE
Air and Radiation

C. NATIONAL OFFICE CONTACT (name and telephone)
John Rasnic 382-2826

D. REGIONAL PARTICIPANTS (continue on reverse)

NAME	REGION	TITLE
Thomas Maslany	III	Lead Region-Director, Air Mgmt. Div.
Lou Gitto	I	Director, Air Management Division

E. WORKYEAR DISTRIBUTION PROPOSAL SUMMARY (in 10ths of a workyear)

	EMPLOYMENT TYPE	I		II		III		IV		V		VI		VII		VIII		IX		X		TOTAL
FY 19 87 PLAN	PERM																					
	OPP-FR																					
	FTE	17	9	33	5	31	0	33	5	70	4	30	2	15	2	13	2	26	6	12	0	283.5
FY 19 88 PROPOSAL	PERM																					
	OPP-FR																					
	FTE	20	4	33	4	28	9	31	7	69	7	28	1	14	6	12	3	23	4	12	0	274.5
DIFFERENCE	PERM																					
	OPP-FR																					
	FTE	2	5	-0	1	- 2	1	- 1	8	-0	7	-2	1	- 0	6	-0	9	-3	2	0	0	-9.0

F. WORKLOAD ANALYSIS AND DISTRIBUTION METHODOLOGY (continue on reverse)

REGIONAL DECISION UNIT PROGRAM CONTRACT/GRAN -LLAR ALLOCATIONS

OPERATING YEAR FY 19 88

DATE 3-9-87

A. DECISION UNIT CODE AND TITLE
FMXW-Stationary Source Compliance

B. NATIONAL PROGRAM OFFICE
Air and Radiation

C. NATIONAL OFFICE CONTACT (name and telephone)
John B. Rasnic 382-2826

D. REGIONAL PARTICIPANTS (continue on reverse)

NAME	REGION	TITLE

E. CONTRACT OR GRANT DOLLAR DISTRIBUTION (in 000's of dollars)

	I	II	III	IV	V	VI	VII	VIII	IX	X	
FY 19 87 PLAN CONTRACTS/GRANTS	131,847	24,043	214,397	301,009	538,847	220,036	101,054	99,035	183,914	70,518	2,109.
FY 19 88 PROPOSAL CONTRACTS/GRANTS	131,817	231,320	189,616	324,959	545,942	234,991	95,669	103,113	180,101	72,152	2,109.
DIFFERENCE CONTRACTS/GRANTS	- 30	-17,723	-24,781	23,950	7,095	14,955	-5,385	4,078	-3,813	1,634	-- 0

F. DISTRIBUTION RATIONALE (continue on reverse)

Same as FY 1987

FTE Distributions Summary

Regions	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FY 83 Total Need	35.9	58.4	49.1	56.5	120.7	49.4	25.6	21.3	40.0	17.0	473.7
Adjustments	(4.3)	(6.7)	(4.3)	(7.5)	(12.8)	(5.9)	(3.0)	(2.4)	(3.8)	(2.4)	(53.1)
Proportionate Cut	(11.0)	(18.0)	(15.6)	(17.0)	(37.5)	(15.1)	(7.9)	(6.5)	(12.6)	(5.1)	(146.1)
FY 83 Model Run	20.6	33.7	29.2	32.0	70.4	28.4	14.7	12.4	23.6	9.5	274.5
FY 87 FTE	17.9	33.5	31.0	33.5	70.4	30.2	15.2	13.2	26.6	12.0	283.5
Change	2.7	0.2	(1.8)	(1.5)	0	(1.8)	(0.5)	(0.8)	(3.0)	(2.5)	(9.0)
*Adjustment for 12 FTE Min.	(0.2)	(0.3)	(0.3)	(0.3)	(0.7)	(0.3)	(0.1)	(0.1)	(0.2)	2.5	0
FY 88 FTE	20.4	33.4	28.9	31.7	69.7	28.1	14.6	12.3	23.4	12.0	274.5
NSPS Woodstove Reserve Undistributed											7.0
Total FY 88 FTE											281.5

*Pursuant to Regional Agreement the adjustment for maintaining a minimum of 12 FTE for any Region shall be proportionally reduced from all other Regions.

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part A - Administration	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
I. Preparation of Performance Standard and Conducting of Evaluation	15.0	Allocation based on size of the Region	Three Tiers 0-20 = 1 20-30 = 2 30+ = 3
II. Development and Monitoring of SPMS	22.0	Equal Regional Workload	One per Region
III. Response to Formal Inquiries			
A. FOIA, Congressional and Citizen Complaints	0.4		2% of Class A and NESHAP sources
B. Review of Draft HQ Guidance and Regulations	10.0		One per Region
Part B - RCRA and State Air Toxics Support			
I. Incinerator Inspection Review	3.5	Technical Assistance to States & Locals	30% of RCRA report (Weddle Memo of 11-23-84)
II. Air Toxics Special Studies	8.0	State and Citizen Requests	Four per Region

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part C - Direct Federal Enforcement Activities	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
I. Initial Development of Case			
A. §114 Letter	0.8	Documentaton of Source Information	Two Times the Number of NOVs
B. Administrative Case Development Inspections	1.1	Two Inspections Per Administrative Order	Two Times the Number of 113 Administrative Orders
C. Litigation Case Development Inspections	2.1	Two Inspections Per Litigation Report	Two Times the Number of NONs and Litigation Reports
D. NOV Preparation & Issuance	0.5	EPA Issues an NOV to Every Enforcement Action	Number of Litigation Reports and Number of EPA 113 Administrative Actions
F. §113 Air Conference	0.5		1.2 Times the Number of NOVs
II. Administrative Orders			
A. §113 Administrative Orders	4.5	50% of 25-75 Civil/ Administrative Split of III Input will be Administrative Orders	These Include All 113(a) and (d) Orders
B. Administrative Resolution	3.0	50% of 25-75 Civil/ Administrative Split of III Input will be Resolved Prior to Issuance of a §113(a) Order	
C. Smelter Orders	14.5		FY 86 Estimates of §119 Orders are 1 in 6 and 3 in 9.

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part C - Direct Federal Enforcement Activities	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
D. NESHAP Waiver Issuance			
1. Confer with State and develop draft source inventory and send letter of notification of possible NESHAP applicability.	0.2	EPA-lead Cases	All sources
2. Receive and analyze waiver request.	0.8		All sources
3. Conduct inspections of sources requesting waivers to determine adequacy.	1.2		All sources
4. Analyze additional information and hold meeting.	1.0	50% of sources	

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part C - Direct Federal Enforcement Activities	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
5. Issue NESHAP Waivers to Coke Ovens			
(a) Coke Ovens	0.7		66
III. Technical Support to Civil/Criminal Actions			
A. Litigation Report	5.8	1. 25% of 40/60 EPA/State Split of Significant Violators (First of the FY start numbers) 2. 25% of 90/10 State/EPA Split of Violation Rate of Class A Sources in Other than Nonattainment Areas. 3. 25% of Violation Activity of Demo/Reno Violators from Part C. VIII.	
B. Consent Decree	12.0	50% of III A + 30% of Active Docket	
C. Litigation Preparation	15.0	70% of Active Docket	
D. Judicial (full) Litigation	20.0	20% of III A	

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part C - Direct Federal Enforcement Activities	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
E. Contempt Actions			
1. Modifications	5.8		6% Concluded Docket sources
2. Final Preparation	15.0		1.5% Concluded Docket sources
3. Trial	20.0		1% Concluded Docket sources
IV. Technical Support to Noncompliance Penalty Determination			
A. Notice of Noncompliance	1.0		5% of the number of Administrative Orders
B. Review of Petition	0.5		All Notices
C. Prehearing Settlement	10.0		75% of Notices
D. Adjudicatory Hearing	12.0		25% of Notices
E. Judicial Review	15.0		20% of Notices
V. Monitor EPA Enforcement Actions			
A. Enforcement Actions, Schedules, Waivers	0.4		100% of 113 EPA Administrative Orders In Most Recent 4 Quarters

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part C - Direct Federal Enforcement Activiries	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
B. Court Decrees	3.0	Pertain to Tracking and Follow-up Inspections	125% Active Concluded Docket Sources
VI. Observe and Review Results of Stack Tests for Determination of Compliance	2.5		30% of EPA Active Concluded Docket Sources 20% 113 (a) and (d) Administrative Orders in Most Recent 4 Quarters 5% of NSPS & NESHAP
VII. Vinyl Chloride NESHAP Enforce-			
A. Emergency Release Reports			
Receive report and determine preventability if possible will follow up	2.2		75% of VC Inventory
B. Semi-Annual Reports			75% of VC Inventory
1. Review and analyze report for possible violations and follow up.	3.5		

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part C - Direct Federal Enforcement Activiries	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
VIII. Ashestos Demolition/ Renovation NESHAP Enforcement			About 20 work years of effort is dedicated to D&R follow up. Work years distributed to cover base program in each Region with additional work years based on past activity levels.
A. Receive, record and analyze 10 day notice or citizen complaint of asbestos demolition activity and follow up.	3.5	Less than 10% of notifications can be addressed	
IX. Contractor Listing	4.0	Estimate	Regional utilization for most recent 5 quarters

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part D - Monitoring of State/ Local Compliance Programs and Support Activities	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
I. Timely and Appropriate Guidance **Implementation**			
A. Review State and Local Documents for Consistency with Policy, Acceptability, and Enforceability	2.0	State assistance for policy and implementation	One per State and local agency
B. Conduct Meetings and Telephone Conversations with State/Local Programs Providing Guidance and Technical Assistance	0.4	Monthly follow up on violations	Class A, NSPS, NESHAPS Violators
II. Maintain CDS			
A. State Agencies	4.0		One per State agency
B. Funded Local Agencies	2.0		One per local agency
C. CDS Data Entry and analysis	0.05	CDS Inventory	One per source
III. Contracts Management, Sponsorship of an Conduct of Workshop			
A Preparation	5.0		One per Region
B. Presentation	1.4		One per State & Local
C. Task Management	0.7		One per 100 hrs of contract work assignments

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part D - Monitoring of State/ Local Compliance Programs and Support Activities	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
IV. New Source Programs			
A. Applicability Determination	0.6		BACT/LAER Clearinghouse Growth
B. PSD Permit Issuance	3.0		ORP Estimate
V. Direct EPA Support for State Enforcement Action	4.0	Requested Assistance	1% of Class A, NSPS and NESHAP sources

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part E - Overview of State/Local Programs	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
I. Overview/Continuous Compliance Inspections			
A. Overview Inspections	1.5		3% of CDS inventory
B. Primacy Inspections	2.1		5% of all NSPS and NESHAPS
II. National Air Audit System Mid-Year Evaluation			
A. State Agencies	4.0		0.6 per State Agency
B. Local Agencies With Federal Funding SIPs	3.0		0.6 per local agency with Federal funding
III. CEM Output Data Monitoring System			
A. Evaluation of Performance Specification Tests	2.5	4% CEM Subset Inventory	1 per source
B. Review and Evaluation of Excess Emission Reports	0.8	20% of CEM Sources	1 per source
C. Maintain CDS CEM Subset	0.1	CEM Inventory	1 per source
D. Field Audits of CEMs	1.1	5% of CEM Inventory	1 per source

ATTACHMENT A

STATIONARY SOURCE COMPLIANCE FY 1987 RESOURCE MODEL

Part F - SIP Revisions and Grants Management	Pricing Factor (in resource weeks)	Planning Assumptions	Derivation of Input
I. Review of State/Local Implementation Plan Revisions for Enforceability, Attainment Redesignation, Bubbles, etc.	0.4		Estimate in a 230
II. Section 105 Grants Management			
1. State Agencies	1.0		One per State
2. Local Agencies with Federal Funding	0.3		One per Local

INPUT DATA - STATIONARY SOURCE FY88 WORKLOAD MODEL

	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9	Region 10	TOT
Active Docket	12.0	27.0	20.0	10.0	53.0	30.0	12.0	6.0	18.0	3.0	191.
Docket Concluded	7.0	6.0	2.0	4.0	28.0	4.0	7.0	4.0	7.0	1.0	70.
CEM Sources	412.0	189.0	445.0	741.0	1004.0	525.0	277.0	248.0	271.0	200.0	4312.
NSPS Sources	53.0	130.0	162.0	859.0	552.0	628.0	171.0	278.0	223.0	89.0	3145.
NESHAP Sources	51.0	144.0	90.0	128.0	272.0	113.0	17.0	4.0	121.0	22.0	962.
A1 Sources	704.0	952.0	1583.0	2734.0	4014.0	1465.0	933.0	478.0	938.0	424.0	14225.
A2 Sources	1112.0	1837.0	905.0	1983.0	2305.0	1370.0	1319.0	493.0	1295.0	749.0	13368.
Contract Hours	2699.0	5097.0	4061.0	6161.0	11368.0	4504.0	2068.0	2027.0	3764.0	1443.0	43192.
Smelter Orders	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.
Coke Ovens Waiver	0.0	3.0	18.0	9.0	41.0	2.0	1.0	2.0	1.0	0.0	77.
A SIP Vio. Non-At.	57.0	99.0	51.0	37.0	201.0	36.0	6.0	7.0	52.0	13.0	559.
NSPS Violators	3.0	10.0	10.0	29.0	47.0	18.0	6.0	11.0	15.0	4.0	153.
PSD Violators	0.0	10.0	3.0	8.0	12.0	5.0	0.0	8.0	5.0	2.0	53.
NESHAP Violators	2.0	2.0	13.0	4.0	13.0	26.0	0.0	0.0	0.0	0.0	60.
Demolition Vio.	14.0	37.0	18.0	2.0	32.0	2.0	7.0	3.0	5.0	3.0	123.
Applicability Det.	3.0	1.0	2.0	9.0	24.0	30.0	2.0	12.0	41.0	5.0	129.
PSD Issuance	1.0	2.0	1.0	0.0	1.0	3.0	3.0	3.0	8.0	0.0	22.
Local Agencies	0.0	4.0	7.0	17.0	14.0	7.0	5.0	1.0	13.0	4.0	72.
105 Grant Mgmt.	6.0	4.0	6.0	8.0	6.0	5.0	4.0	6.0	6.0	4.0	55.
Significant Vio.	36.0	27.0	62.0	56.0	177.0	24.0	6.0	21.0	56.0	12.0	477.
V- C Sources	0.0	7.0	3.0	6.0	5.0	20.0	0.0	0.0	3.0	0.0	44.
SIP Revisions	34.0	21.0	47.0	54.0	118.0	30.0	23.0	17.0	45.0	22.0	411.
Asbestos Activity	125.0	222.0	142.0	81.0	71.0	24.0	54.0	92.0	47.0	18.0	876.
Adm. Orders	24.0	22.0	13.0	3.0	74.0	2.0	8.0	6.0	18.0	5.0	175.
A SIP Vio. Attain.	100.0	142.0	88.0	73.0	322.0	93.0	20.0	32.0	46.0	67.0	983.
Incinerators RCRA	20.0	37.0	25.0	30.0	39.0	26.0	9.0	2.0	7.0	3.0	198.
Docket Concluded	7.0	6.0	2.0	4.0	28.0	4.0	7.0	4.0	7.0	1.0	70.

ACTIVITY FREQUENCY – STATIONARY SOURCE FY88 WORKLOAD MODEL

	Region 1	Region 2	Region 3	Region 4	Region 5
AI. Performance Stds.	1.0	3.0	2.0	3.0	3.0
II. SPMS Monitoring	1.0	1.0	1.0	1.0	1.0
III. A. FOIA	37.3	58.7	51.6	96.9	131.8
B. Reg. Review	1.0	1.0	1.0	1.0	1.0
BI. Incinerator Review	6.0	11.1	7.5	9.0	11.7
II. Air Toxics Studies	4.0	4.0	4.0	4.0	4.0
CI. Case Development					
A. §114 Letters	80.4	139.9	104.1	66.4	283.4
B. Administrative	59.9	104.2	77.5	49.5	211.1
C. Litigative	22.0	38.3	28.5	18.2	77.6
D. NOV Prep/Issue	40.2	70.0	52.0	33.2	141.7
E. §113 Air Confer.	48.2	84.0	62.4	39.9	170.0
II. Admin. Orders					
A. §113 Orders	15.0	26.1	19.4	12.4	52.8
B. Admin. Resolution	15.0	26.1	19.4	12.4	52.8
C. Smelter Orders	0.0	0.0	0.0	0.0	0.0
D. NESHAPS WAIVERS					
1. Confer/Send Letter	0.0	3.0	18.0	9.0	41.0
2. Receive Waiver	0.0	3.0	18.0	9.0	41.0
3. Inspect Source	0.0	3.0	18.0	9.0	41.0
4. Hold Meeting	0.0	1.5	9.0	4.5	20.5
5. Coke Ovens Waiver	0.0	3.0	18.0	9.0	41.0
III. Civil/Criminal Acts					
A. Litigation Reports					
1. Significant Violators	3.8	2.7	6.2	5.6	17.7
2. Attainment/Other	3.2	5.9	2.6	2.4	10.5
3. Demo/Reno Activity	3.5	9.3	4.5	0.5	8.0
B. Consent Decrees					
1. 50% Of New Cases	5.1	8.9	6.6	4.2	18.1
2. 50% Active Docket	6.0	13.5	10.0	5.0	26.5
C. Litigation Prep.	8.4	18.9	14.0	7.0	37.1
D. Judicial Actions	2.1	3.6	2.7	1.7	7.2
E. Contempt Actions					
1. Modifications	0.4	0.4	0.1	0.2	1.7
2. Trial Preparation	0.1	0.1	0.0	0.1	0.4
3. Trials	0.1	0.1	0.0	0.0	0.3
IV. §120 Program					
A. NONs	0.7	1.3	1.0	0.6	2.6
B. Petition Review	0.7	1.3	1.0	0.6	2.6

ACTIVITY FREQUENCY - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 6	Region 7	Region 8	Region 9	Region 10	TOTAL
AI.Performance Stds.	2.0	1.0	1.0	2.0	1.0	19.0
II. SPMS Monitoring	1.0	1.0	1.0	1.0	1.0	10.0
III.A.FOIA	59.0	45.4	19.5	47.1	23.9	571.1
B.Reg.Review	1.0	1.0	1.0	1.0	1.0	10.0
BI. Incinerator Review	7.8	2.7	0.6	2.1	0.9	59.4
II.Air Toxics Studies	4.0	4.0	4.0	4.0	4.0	40.0
CI. Case Development						
A. §114 Letters	52.9	23.5	29.6	66.3	29.8	676.3
B. Administrative	39.4	17.5	22.0	49.1	22.2	652.5
C. Litigative	14.5	6.4	8.1	18.4	8.2	240.2
D. NOV Prep/Issue	26.5	11.8	14.8	33.1	14.9	438.2
E. §113 Air Confer.	31.8	14.1	17.8	38.8	17.9	525.8
II. Admin. Orders						
A. §113 Orders	9.9	4.4	5.5	12.3	5.5	183.1
B. Admin. Resolution	9.9	4.4	5.5	12.3	5.5	183.1
C. Smelter Orders	0.0	0.0	0.0	0.0	0.0	0.0
D.NESHAPS WAIVERS						
1.Confer/Send Letter	2.0	1.0	2.0	1.0	0.0	77.0
2.Receive Waiver	2.0	1.0	2.0	1.0	0.0	77.0
3.Inspect Source	2.0	1.0	2.0	1.0	0.0	77.0
4. Hold Meeting	1.0	0.5	1.0	0.5	0.0	38.5
5. Coke Ovens Waiver	2.0	1.0	2.0	1.0	0.0	77.0
III. Civil/Criminal Acts						
A. Litigation Reports						
1.Significant Violators	2.4	0.6	2.1	5.6	1.2	47.7
2. Attainment/Other	3.9	0.7	0.9	1.8	1.9	33.5
3. Demo/Reno Activity	0.5	1.8	0.8	1.3	0.8	30.8
B. Consent Decrees						
1. 50% Of New Cases	3.4	1.5	1.9	4.3	1.9	56.0
2. 50% Active Docket	15.0	6.0	3.0	9.0	1.5	95.5
C. Litigation Prep.	21.0	8.4	4.2	12.6	2.1	133.7
D. Judicial Actions	1.4	0.8	0.8	1.7	0.8	22.4
E. Contempt Actions						
1.Modifications	0.2	0.4	0.2	0.4	0.1	4.2
2. Trial Preparation	0.1	0.1	0.1	0.1	0.0	1.1
3. Trials	0.0	0.1	0.0	0.1	0.0	0.7
IV. §120 Program						
A. NONs	0.5	0.2	0.3	0.6	0.3	8.2
B.Petition Review	0.5	0.2	0.3	0.6	0.3	8.2

ACTIVITY FREQUENCY - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 1	Region 2	Region 3	Region 4	Region 5
C. Prehearing Settle	0.8	1.0	0.7	0.5	2.0
D. ALJ Hearing	0.2	0.3	0.2	0.2	0.7
E. Judicial Review	0.0	0.1	0.0	0.0	0.1
V. Monitoring					
A. Enforcement Actns.	24.0	22.0	13.0	3.0	74.0
B. Court Decrees	8.8	7.5	2.5	5.0	35.0
VI. Observe/Review					
1. Consent Decrees	2.1	1.8	0.6	1.2	8.4
2. 20% of 113(a)&(d)	4.8	4.4	2.6	0.6	14.8
3. 5% of NSPS/NESHAP	5.2	13.7	12.6	49.4	41.2
VII. Vinyl Chloride Enf.					
A. Emergency Report	0.0	5.3	2.3	4.5	3.8
B. Semi-annual Report	0.0	5.3	2.3	4.5	3.8
VIII. Demo/Reno Enf.	125.0	222.0	142.0	81.0	71.0
IX. Contractor Listing	0.0	0.0	0.0	0.0	0.0
D.I. T/A Implement					
A. Review State Action	6.0	8.0	13.0	25.0	20.0
B. Monthly Meetings	162.0	253.0	162.0	143.0	583.0
II. Maintain CDS					
A. State Agencies	6.0	4.0	6.0	8.0	6.0
B. Local Agencies	0.0	4.0	7.0	17.0	14.0
C. Maintain CDS	1920.0	3063.0	2740.0	5704.0	7143.0
III. Contract Mgmnt.					
A. Workshop Prepare	1.0	1.0	1.0	1.0	1.0
B. Workshop Present	6.0	8.0	13.0	25.0	20.0
C. Task Management	27.0	51.0	40.6	61.6	113.7
IV. New Source Progm					
A. Applicability Det.	3.0	1.0	2.0	9.0	24.0
B. PSD Issuance	1.0	2.0	1.0	0.0	1.0
V. State Enf. Actions	19.2	30.6	27.4	57.0	71.4
EI. Compliance/Overvw.					
A. Overview Inspection	57.6	91.9	82.2	171.1	214.3
B. Primacy Inspection	5.2	13.7	12.6	49.4	41.2
II. NAAS Activities					
A. State Agencies	3.6	2.4	3.6	4.8	3.6
B. Funded Locals	0.0	2.4	4.2	10.2	8.4
III. CEM Systems Reviw					
A. PST Evaluation	0.0	0.0	0.0	0.0	0.0
B. Review EERs	82.4	37.8	89.0	148.2	200.8

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ACTIVITY FREQUENCY – STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 6	Region 7	Region 8	Region 9	Region 10	TOTAL
C. Prehearing Settle	0.4	0.2	0.2	0.5	0.2	6.1
D. ALJ Hearing	0.1	0.1	0.1	0.2	0.1	2.0
E. Judicial Review	0.0	0.0	0.0	0.0	0.0	0.4
V. Monitoring						
A. Enforcement Actns.	2.0	8.0	5.0	18.0	5.0	175.0
B. Court Decrees	5.0	8.8	5.0	8.8	1.3	87.5
VI. Observe/Review						
1. Consent Decrees	1.2	2.1	1.2	2.1	0.3	21.0
2. 20% of 113(a)&(d)	0.4	1.6	1.2	3.6	1.0	35.0
3. 5% of NSPS/NESHAP	37.1	9.4	14.1	17.2	5.6	205.4
VII. Vinyl Chloride Enf.						
A. Emergency Report	15.0	0.0	0.0	2.3	0.0	33.0
B. Semi-annual Report	15.0	0.0	0.0	2.3	0.0	33.0
VIII. Demo/Reno Enf.	24.0	54.0	92.0	47.0	18.0	876.0
IX. Contractor Listing	0.0	0.0	0.0	0.0	0.0	0.0
D.I. T/A Implement						
A. Review State Action	12.0	9.0	7.0	19.0	8.0	127.0
B. Monthly Meetings	173.0	32.0	50.0	113.0	84.0	1755.0
II. Maintain CDS						
A. State Agencies	5.0	4.0	6.0	6.0	4.0	55.0
B. Local Agencies	7.0	5.0	1.0	13.0	4.0	72.0
C. Maintain CDS	3576.0	2440.0	1253.0	2577.0	1284.0	31700.0
III. Contract Mgmnt.						
A. Workshop Prepare	1.0	1.0	1.0	1.0	1.0	10.0
B. Workshop Present	12.0	9.0	7.0	19.0	8.0	127.0
C. Task Management	45.0	20.7	20.3	37.6	14.4	431.9
IV. New Source Progm						
A. Applicability Det.	30.0	2.0	12.0	41.0	5.0	129.0
B. PSD Issuance	3.0	3.0	3.0	8.0	0.0	22.0
V. State Enf. Actions	35.8	24.4	12.5	25.8	12.8	317.0
E I. Compliance/Overvw.						
A. Overview Inspection	107.3	73.2	37.6	77.3	38.5	951.0
B. Primacy Inspection	37.1	9.4	14.1	17.2	5.6	205.4
II. NAAB Activities						
A. State Agencies	3.0	2.4	3.6	3.6	2.4	33.0
B. Funded Locals	4.2	3.0	0.6	7.8	2.4	43.2
III. CEM Systems Reviw						
A. PST Evaluation	0.0	0.0	0.0	0.0	0.0	0.0
B. Review EERs	105.0	55.4	49.6	54.2	40.0	862.4

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ACTIVITY FREQUENCY - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 1	Region 2	Region 3	Region 4	Region 5
C. Maintain CEM Subset	412.0	189.0	445.0	741.0	1004.0
D. Field Audit CEMs	20.6	9.5	22.3	37.1	50.2
FI. EPA/State Support					
A. SIP Revisions	34.0	21.0	47.0	54.0	118.0
B.1. State Agencies	6.0	4.0	6.0	8.0	6.0
2. Local Agencies	0.0	4.0	7.0	17.0	14.0

ACTIVITY FREQUENCY - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 6	Region 7	Region 8	Region 9	Region 10	TOTAL
C. Maintain CEM Subset	525.0	277.0	248.0	271.0	200.0	4312.0
D. Field Audit CEMs	26.3	13.9	12.4	13.6	10.0	215.6
FI. EPA/State Support						
A. SIP Revisions	30.0	23.0	17.0	45.0	22.0	411.0
B.1. State Agencies	5.0	4.0	6.0	6.0	4.0	55.0
2. Local Agencies	7.0	5.0	1.0	13.0	4.0	72.0

RESOURCE WEEKS / WORKYEAR DISTRIBUTIONS - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 1	Region 2	Region 3	Region 4	Region 5
AI. Performance Stds.	15.0	45.0	30.0	45.0	45.0
II. SPMS Monitoring	22.0	22.0	22.0	22.0	22.0
III. A. FOIA	14.9	23.5	20.6	38.8	52.7
B. Reg. Review	10.0	10.0	10.0	10.0	10.0
BI. Incinerator Review	21.0	38.9	26.3	31.5	41.0
II. Air Toxics Studies	32.0	32.0	32.0	32.0	32.0
CI. Case Development					
A. §114 Letters	64.3	112.0	83.3	53.2	226.7
B. Administrative	65.8	114.7	85.3	54.4	232.2
C. Litigative	46.2	80.4	59.8	38.2	162.9
D. NOV Prep/Issue	20.1	35.0	26.0	16.6	70.9
E. §113 Air Confer.	24.1	42.0	31.2	19.9	85.0
II. Admin. Orders					
A. §113 Orders	67.3	117.3	87.2	55.7	237.5
B. Admin. Resolution	44.9	78.2	58.1	37.1	158.3
C. Smelter Orders	0.0	0.0	0.0	0.0	0.0
D. NESHAPS WAIVERS					
1. Confer/Send Letter	0.0	0.6	3.6	1.8	8.2
2. Receive Waiver	0.0	2.4	14.4	7.2	32.8
3. Inspect Source	0.0	3.6	21.6	10.8	49.2
4. Hold Meeting	0.0	1.5	9.0	4.5	20.5
5. Coke Oven Waiver	0.0	2.1	12.6	6.3	28.7
III. Civil/Criminal Acts					
A. Litigation Reports					
1. Significant Violators	20.9	15.7	36.0	32.5	102.7
2. Attainment/Other	18.3	34.2	14.9	13.8	60.6
3. Demo/Reno Activity	20.3	53.7	26.1	2.9	46.4
B. Consent Decrees					
1. 50% Of New Cases	61.5	107.1	79.7	50.9	216.9
2. 50% Active Docket	72.0	162.0	120.0	60.0	318.0
C. Litigation Prep.	126.0	283.5	210.0	105.0	556.5
D. Judicial Actions	41.0	71.4	53.1	33.9	144.6
E. Contempt Actions					
1. Modifications	2.4	2.1	0.7	1.4	9.7
2. Trial Preparation	1.6	1.4	0.5	0.9	6.3
3. Trials	1.4	1.2	0.4	0.8	5.6
IV. §120 Program					
A. NONs	0.7	1.3	1.0	0.6	2.6
B. Petition Review	0.4	0.7	0.5	0.3	1.3

RESOURCE WEEKS / WORKYEAR DISTRIBUTIONS - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 6	Region 7	Region 8	Region9	Region 10	TOTAL
AI.Performance Stds.	30.0	15.0	15.0	30.0	15.0	285.0
II. SPMS Monitoring	22.0	22.0	22.0	22.0	22.0	220.0
III.A.FOIA	23.6	18.2	7.8	18.8	9.6	228.4
B.Reg.Review	10.0	10.0	10.0	10.0	10.0	100.0
BI. Incinerator Review	27.3	9.5	2.1	7.4	3.2	207.9
II.Air Toxics Studies	32.0	32.0	32.0	32.0	32.0	320.0
CI. Case Development						
A. §114 Letters	42.3	18.8	23.7	53.0	23.8	701.1
B. Administrative	43.4	19.3	24.3	54.0	24.4	717.7
C. Litigative	30.4	13.5	17.0	38.7	17.1	504.3
D. NOV Prep/Issue	13.2	5.9	7.4	16.6	7.4	219.1
E. §113 Air Confer.	15.9	7.1	8.9	19.9	8.9	262.9
II. Admin. Orders						
A. §113 Orders	44.3	19.7	24.8	55.2	25.0	734.0
B. Admin. Resolution	29.6	13.1	16.5	36.8	16.6	489.4
C. Smelter Orders	0.0	0.0	0.0	0.0	0.0	0.0
D.NESHAPS WAIVERS						
1.Confer/Send Letter	0.4	0.2	0.4	0.2	0.0	15.4
2.Receive Waiver	1.6	0.8	1.6	0.8	0.0	61.6
3.Inspect Source	2.4	1.2	2.4	1.2	0.0	92.4
4. Hold Meeting	1.0	0.5	1.0	0.5	0.0	38.5
5. Coke Ovens Waiver	1.4	0.7	1.4	0.7	0.0	53.9
III. Civil/Criminal Acts						
A. Litigation Reports						
1. Significant Violators	13.9	3.5	12.2	32.5	7.0	276.7
2. Attainment/Other	22.3	3.8	5.4	10.2	10.7	194.2
3. Demo/Reno Activity	2.9	10.2	4.4	7.3	4.4	178.4
B. Consent Decrees						
1. 50% Of New Cases	40.5	18.0	22.7	51.6	22.8	671.6
2. 50% Active Docket	180.0	72.0	36.0	108.0	18.0	1146.0
C. Litigation Prep.	315.0	126.0	63.0	189.0	31.5	2005.5
D. Judicial Actions	27.0	12.0	15.1	34.4	15.2	447.7
E. Contempt Actions						
1.Modifications	1.4	2.4	1.4	2.4	0.3	24.4
2. Trial Preparation	0.9	1.6	0.9	1.6	0.2	15.8
3. Trials	0.8	1.4	0.8	1.4	0.2	14.0
IV. §120 Program						
A. NONs	0.5	0.2	0.3	0.6	0.3	8.2
B.Petition Review	0.2	0.1	0.1	0.3	0.1	4.1

Model-88

2/18/87

RESOURCE WEEKS / WORKYEAR DISTRIBUTIONS - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 1	Region 2	Region 3	Region 4	Region 5
C. Prehearing Settle	5.6	9.8	7.3	4.6	19.8
D. ALJ Hearing	2.2	3.9	2.9	1.9	7.9
E. Judicial Review	0.6	1.0	0.7	0.5	2.0
V. Monitoring					
A. Enforcement Actns.	9.6	8.8	5.2	1.2	29.6
B. Court Decrees	26.3	22.5	7.5	15.0	105.0
VI. Observe/Review					
1. Consent Decrees	5.3	4.5	1.5	3.0	21.0
2. 20% of 113(a)	12.0	11.0	6.5	1.5	37.0
3. 40% of NSPS/NESHAP	13.0	34.3	31.5	123.4	103.0
VII. Vinyl Chloride Enf.					
A.Emergency Reports	0.0	11.6	5.0	9.9	8.3
B. Semi-annual Report	0.0	18.4	7.9	15.8	13.1
VIII. Demo/Reno Enf.	125.0	222.0	142.0	81.0	71.0
IX. Contractor Listing	0.0	0.0	0.0	0.0	0.0
D.I. T/A Implement					
A.Review State Action	12.0	16.0	26.0	50.0	40.0
B. Monthly Meetings	64.8	101.2	64,8	57.2	233.2
II.Maintain CDS					
A. State Agencies	18.0	12.0	18.0	24.0	16.0
B. Local Agencies	0.0	8.0	14.0	34.0	28.0
C. Maintain CDS	96.0	153.2	137.0	285.2	357.2
III.Contract Mgmnt.					
A. Workshop Prepare	5.0	5.0	5.0	5.0	5.0
B. Workshop Present	8.4	11.2	18.2	35.0	28.0
C. Task Management	18.9	35.7	28.4	43.1	79.6
IV. New Source Progm					
A. Applicability Det.	1.8	0.6	1.2	5.4	14.4
B. PSD Issuance	3.0	6.0	3.0	0.0	3.0
V. State Enf. Actions	74.9	119.5	106.9	222.5	278.6
EI. Compliance/Overvw.					
A. Overview Inspection	86.4	137.8	123.3	256.7	321.4
B. Primacy Inspection	10.9	28.8	26.5	103.6	86.5
II.NAAS Activities					
A. State Agencies	14.4	9.6	14.4	19.2	14.4
B. Funded Locals	0.0	7.2	12.6	30.6	25.2
III. CEM Systems Reviw					
A. PST Evaluation	0.0	0.0	0.0	0.0	0.0
B. Review EERs	65.9	30.2	71.2	118.6	160.6

RESOURCE WEEKS / WORKYEAR DISTRIBUTIONS - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 6	Region 7	Region 8	Region9	Region 10	TOTAL
C. Prehearing Settle	3.7	1.6	2.1	4.6	2.1	61.2
D. ALJ Hearing	1.5	0.7	0.8	1.8	0.8	24.5
E. Judicial Review	0.4	0.2	0.2	0.5	0.2	6.1
V. Monitoring						
A. Enforcement Actns.	0.8	3.2	2.4	7.2	2.0	70.0
B. Court Decrees	15.0	11.8	15.0	26.3	3.8	262.5
VI. Observe/Review						
1. Consent Decrees	3.0	5.3	3.0	5.3	0.8	52.5
2. 208 of 113(a)&(d)	1.0	4.0	3.0	9.0	2.5	87.5
3. SI of NSPS/NESHAP	92.6	23.5	35.3	43.0	13.9	513.4
VII. Vinyl Chloride Enf.						
A. Emergency Report	33.0	0.0	0.0	5.0	0.0	72.6
B. Semi-annual Report	52.5	0.0	0.0	7.9	0.0	115.5
VIII. Demo/Reno Enf.	24.0	54.0	92.0	47.0	18.0	876.0
IX. Contractor Listing	0.0	0.0	0.0	0.0	0.0	0.0
D.I. T/A Implement						
A.Review State Action	24.0	18.0	14.0	38.0	16.0	254.0
B. Monthly Meetings	69.2	12.8	20.0	45.2	33.6	702.0
II.Maintain CDS						
A. State Agencies	15.0	12.0	18.0	18.0	12.0	165.0
B. Local Agencies	14.0	10.0	2.0	26.0	8.0	144.0
C. Maintain CDS	178.8	122.0	82.7	128.9	84.2	1585.0
III.Contract Mgmnt.						
A.Workshop Prepare	5.0	5.0	5.0	5.0	5.0	50.0
B. Workshop Present	16.8	12.6	9.8	26.6	11.2	177.8
C. Task Management	31.5	14.5	14.2	26.3	10.1	302.3
IV. New Source Progm						
A. Applicability Det.	18.0	1.2	7.2	24.6	3.0	77.4
B. PSD Issuance	9.0	9.0	9.0	24.0	0.0	66.0
V. State Enf. Actions	139.5	95.2	46.9	100.5	50.1	1236.3
E I. Compliance/Overvw.						
A. Overview Inspection	160.9	109.8	36.4	116.0	57.8	1426.5
B. Primacy Inspection	77.8	19.7	29.6	36.1	11.7	431.2
II.NAAS Activities						
A. State Agencies	12.0	9.6	14.4	14.4	9.6	132.0
B. Funded Locals	12.6	9.0	1.8	23.4	7.2	129.6
III. CEM Systems Reviw						
A. PST Evaluation	0.0	0.0	0.0	0.0	0.0	0.0
B.Review EERs	84.0	44.3	30.7	43.4	32.0	609.9

RESOURCE WEEKS / WORKYEAR DISTRIBUTIONS - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 1	Region 2	Region 3	Region 4	Region 5
C. Maintain CEM Subset	41.2	18.9	44.5	74.1	100.4
D. CEM Field Audits	22.7	10.4	24.5	40.8	55.2
VI. EPA/State Support					
A. SIP Revisions	13.6	8.4	18.8	21.8	47.2
B. 1. State Agencies	6.0	4.0	6.0	8.0	6.0
2. Local Agencies	0.0	1.2	2.1	5.1	4.2
TOTAL NEED Workweeks	1577.6	2567.6	2160.0	2485.2	5310.7
TOTAL NEED Workyears	35.9	58.4	49.1	56.5	120.7
Adjustments	0.0	0.0	0.0	0.0	0.0
Unfunded RCRA Support	-53.0	-70.9	-38.3	-63.5	-93.0
50% Cut in Attainment Enf	-65.8	-123.8	-53.8	-74.2	-234.3
Overview Insp. Cut to 2%	-29.4	-42.7	-41.6	-82.3	-101.0
EPA Support Cut to 0.5%	-39.2	-57.0	-55.4	-109.7	-134.7
Adjusted Total	1390.2	2273.2	1970.9	2155.5	4747.7
Proportional Cut 34.7%	-483.0	-789.7	-684.7	-748.8	-1649.4
Grand Total Workweeks	907.2	1483.5	1286.2	1406.7	3098.4
GRAND TOTAL Workyears	20.6	33.7	29.2	32.0	70.4

RESOURCE WEEKS / WORKYEAR DISTRIBUTIONS - STATIONARY SOURCE FY88 WORKLOAD MODEL

ACTIVITIES	Region 6	Region 7	Region 8	Region9	Region 10	TOTAL
C. Maintain CEM Subset	52.5	27.7	24.8	27.1	20.0	431.2
D. Field Audit CEMs	28.9	15.2	13.6	14.9	11.0	237.2
FI. EPA/State Support						
A. SIP Revisions	12.0	9.2	6.8	10.0	8.8	184.4
B.1. State Agencies	5.0	4.0	6.0	6.0	4.0	55.0
2. Local Agencies	2.1	1.5	0.3	3.9	1.2	21.6
TOTAL NEED Workweeks	2172.4	1125.0	938.3	1760.5	748.2	20843.6
TOTAL NEED Workyears	49.4	25.6	21.3	40.0	17.0	473.7
Adjustments	0.0	0.0	0.0	0.0	0.0	0.0
Unfunded RCRA Support	-59.3	-41.5	-34.1	-39.4	-35.2	-527.9
50% Cut in Attainment Enf	-74.9	-9.7	-21.2	-36.9	-26.6	-721.2
Overview Insp. Cut to 2%	-51.8	-34.6	-20.9	-38.9	-19.8	-438.1
EPA Support Cut to 0.5%	-69.2	-48.1	-27.9	-51.9	-28.4	-617.4
Adjustment Total	1917.2	983.1	834.2	1593.4	638.2	18541.0
Proportional Cut 33.8%	-666.0	-345.0	-289.8	-553.6	-221.7	-6441.1
Grand Total Workweeks	1251.1	648.1	544.4	1039.8	416.5	12099.9
GRAND TOTAL Workyears	28.4	14.7	12.4	23.6	9.5	274.5

Mr. Synar. This includes a workload model for resources for the entire stationary source program for fiscal year 1988 including the asbestos NESHAP. Now let's talk a little about how this was put together because I think it provides us an idea of what's going on in this program here. Mr. Emison, do I understand correctly, that based upon actual experience, you gather data regarding the time required to do various activities. For example, the number of notifications received, the time processing and responding to notifications, and time preparing cases. Those types of things are collected?

Mr. Emison. We get that information and——

Mr. Synar. OK. Because the budget process has to start so far in advance, the data used to plan for this fiscal year, 1988, was actually data from fiscal year 1986, isn't that correct?

Mr. Emison. That sounds about right on the leadtime.

Mr. Synar. So as we discussed earlier, the asbestos NESHAP notifications to EPA increased by almost 60 percent from 1986 to 1988. So, by using the 1986 data, the workload model for fiscal year 1988 actually tends to understate the workload, doesn't it? You can say yes.

Mr. Emison. Yes, sir.

Mr. Synar. OK. Nobody else can see you. So then you assume that less than 10 percent of the notifications can be addressed.

Mr. Emison. In terms of following up with the——

Mr. Synar. Right.

Mr. Emison [continuing]. EPA inspectors. That's what the——

Mr. Synar. Yes. So let's look at page 7 of the document, if we could. Now the first line contains the full-time equivalents needed for the overall air program. That's based upon the actual activities for 1986. That's page 7. Now it was projected that the program would need 473.7 full-time equivalent staff by fiscal year 1988. Are you there yet?

Mr. Emison. I'm not with you yet.

Mr. Synar. It's page 7. Just count seven down. It says "FTE distribution summary."

Mr. Emison. OK.

Mr. Synar. All right. So the first line contains the total full-time equivalents needed for overall air program based upon actual activities. And it was projected to need 473 full-time equivalent staff for fiscal year 1988. Now here's the problem. As you look further down this chart, after calculating the number of people needed, a variety of adjustments including an across-the-board cut of 33 percent was made. So at the very time that the workload for the asbestos NESHAP program was almost doubling, Mr. Emison, cutbacks were being made in the air program so that you couldn't even keep up with the 1986 workload. Is that correct?

Mr. Emison. What this represents is a, an unconstrained estimate of what it would take to operate stationary source program in the regional offices. We didn't take that unconstrained estimate and ratio it back, making the adjustments that you're talking about in here, to get to the level of resources that we have available to us. That you have appropriated money for.

Mr. Synar. The point is you couldn't even deal with the 1986 workload with the amount of personnel and resources you had, could you?

Mr. Emison. After we ratcheted back.

Mr. Synar. Right.

Mr. Emison. Yes, sir.

Mr. Synar. All right. Now, let's look for a minute at the data in region II, which includes New York and New Jersey. Now neither State has a delegated program, although New York just recently adopted its own regarding asbestos. In region II, there are two full-time and eight part-time NESHAP inspectors. Now those eight inspectors can spend 10 percent of their time working on this program, bringing the grand total of Federal inspectors to 2.8 for the States of New Jersey and New York. Now, with as much renovation and demolition activity that goes on in those States, how serious a threat to lawbreakers do you think, Mr. Emison, 2.8 inspectors are going to be?

Mr. Emison. It's certainly not an enormous number of people to apply to it, Congressman.

Mr. Synar. So in other words, lawbreakers are pretty well on notice that they're not going to be reviewed very carefully. Are they?

Mr. Emison. I don't know if I could reach that conclusion. But it's certainly not an enormous number.

Mr. Synar. All right. Let me ask unanimous consent at this time that an article which recently appeared in the New York Times be included into the record.

[The article follows:]

The New York Times Apr 28, 1988 pg D1, D7

Asbestos Buildings Go Begging

Now Harder to Sell, Lease or Finance; State Laws Cited

By ERIC N. BERG

Only a few years ago, hardly anyone worried about renting or buying an office building that contained asbestos, the cancer-causing construction material.

But that has suddenly changed. Owners of asbestos-filled buildings are having more difficulty attracting tenants. Sellers have to offer steep discounts. And buyers are having trouble lining up lenders or investors.

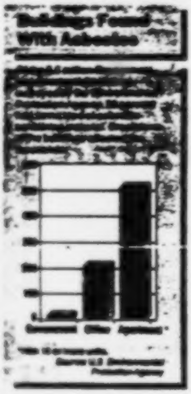
The key reason for the turnabout is new state laws. Led by New York, 22 states have adopted anti-asbestos laws in the last year alone, raising the number of states regulating asbestos to 38, according to Asbestos Abatement Report, a newsletter. It is only a matter of time, experts say, before the remaining states pass asbestos laws, which typically require a landlord to remove asbestos before a building is demolished or renovated and regulate how it shall be removed.

"Over the last two years, asbestos has really taken off as a problem," said Kevin F. Haggerty, executive vice president of Cushman & Wakefield Inc., a national real estate firm. "You're seeing a much smaller universe of players willing to get involved" with buildings containing asbestos.

Outlawed in the 70's

Until it was outlawed in the early 1970's, asbestos was used to insulate, soundproof and fireproof buildings. The vast majority of buildings constructed in major cities between 1920 and 1970 contain asbestos. These structures include some of New York's most famous — from the Pan Am Building to Madison Square Garden.

Now, in the wake of the new laws, real estate professionals say prices for asbestos-containing office buildings have fallen 5 to 10 percent in Manhattan and even more in other cities. That can translate into tens of millions of dollars when such buildings command hundreds of millions of dollars.



Buildings Found With Asbestos

*Has 10 or more units.

Source: U.S. Environmental Protection Agency

"I don't know one who will buy a building with asbestos," said Mr. Haggerty of the dozen or so Japanese investors he deals with.

Such companies as the International Business Machines Corporation and reportedly the Metropolitan Life Insurance Company will not lease office space in buildings containing asbestos.

And fearing a tide of asbestos-related lawsuits, institutional investors — including banks, pension funds and insurance companies — are increasingly refusing to lend against or buy into asbestos-containing buildings.

"Aggressive lawyers will target everyone: lenders, owners, contractors, anybody who had anything to do with a building could be the object of a lawsuit," said Daniel J. Steemer of Steemer & Drexler, a New York law firm specializing in asbestos cases.

For years, scientists have argued that asbestos fibers, while safe when contained, can cause cancer when torn from walls and ceilings and allowed to float freely in the air. Only in the last 12 to 18 months, however, as states began to adopt ordinances requiring the removal of asbestos before renovation, has the real estate industry begun to consider the harmful impact of asbestos.

Understandably, asbestos remains a sensitive issue. Of three major insurers that invest in real estate — Prudential, Metropolitan Life and Equitable — only Equitable agreed to discuss asbestos in an interview.

Moreover, when asked to discuss buildings where asbestos has impaired value, killed a sale or prevented financing, ordinarily outgoing real estate professionals will not talk. They say that once it becomes public that a building has an "asbestos problem," the building could be in trouble for years.

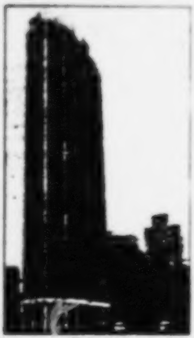
"These people are still trying to sell their buildings," said John S. Lillard, president of JMB Institutional Realty Inc. The Chicago-based real estate investment firm says it has walked away from more than a half-dozen purchases in the last year because the buildings contained asbestos.

Real estate specialists who requested anonymity identified several notable deals affected by asbestos:

¶The Chase Manhattan Bank has been having trouble selling 1 New York Plaza, an office tower that went on the market last winter. In response, a Chase lawyer called asbestos "simply an economic factor for buyers to consider." He added, "It is

The New York Times/[illegible]

ARCO Plaza in downtown Los Angeles, at top. In Manhattan, the Gulf and Western Building, center, and 1 New York Plaza. All are asbestos-filled buildings whose owners are having trouble finding buyers or obtaining refinancing.



The New York Times/[illegible]

Continued on Page D7

Asbestos-Filled Buildings Harder to Rent or Sell

Continued From First Business Page

not the kind of thing that would cause an otherwise interested buyer to change its mind."

- When the General Electric Company recently tried to refinance the Gulf and Western Building, a high-rise at Columbus Circle in Manhattan that G.E. jointly owns, a major insurer refused to lend. Even when G.E. offered to indemnify the insurer against any asbestos-related lawsuits and to increase the interest rate it would pay on the loan by one-half percentage point, the insurer still said no. Jonathan Wexler, a partner at the First Winthrop Corporation, G.E.'s partner, agreed that the effort to refinance the building ran into difficulty because of asbestos. But he said plans to refinance it were scrapped for other reasons.
- If the Exxon Building at 1251 Avenue of the Americas at 50th Street had not contained asbestos, a dozen or so bidders would probably have competed for the building, sold in late 1986. Instead, the auction attracted only three serious bidders, people familiar with the deal say, and the ultimate buyer, Mitsui of Japan, cut its price by more than $30 million when it learned it would have to spend that much to remove the asbestos. Edward S. Gordon, president of the Edward S. Gordon Company, the real estate firm that arranged the deal, declined to comment.
- In 1986, both the Shuwa Corporation, a big Japanese real estate company, and Olympia & York, the Canadian developer, set bids lower for the ARCO Plaza, a huge office complex in downtown Los Angeles, after learning it was full of asbestos. Shuwa bought the building.

That most asbestos-filled buildings have eventually been sold and financed suggests that asbestos is a hurdle that can be cleared. Indeed, a majority of real estate professionals take the view that asbestos has simply become another cost of doing business.

Several notable deals are said to have been affected by asbestos.

They calculate the cost of asbestos removal at $5 to $30 a square foot, depending on whether the material is throughout a building or only in selected areas. They estimate "down" time — when a building must remain vacant while the asbestos is being removed. And they estimate how much less rent an asbestos building can command.

They also say that while more costly, financing of asbestos-containing buildings can be obtained. Although rules of thumb are rough, lending experts say asbestos can increase the interest rate on a loan by one-half to one percentage point.

"If the conditions are right — if the risks can be identified and managed — people will lend," said Craig M. Hatkoff, a managing director of the Chemical Realty Group, the real estate arm of the Chemical Bank.

When It's Not a Problem

Other experts note that asbestos is often not a problem — for instance, when it is wrapped around a few pipes in a building's boiler room. Others note that in New York City, such factors as location are far more important in determining value than asbestos.

"I'd rather have an asbestos-filled building on Park Avenue than a clean building on Second Avenue," said John Fenelle, a partner at Simpson Thacher & Bartlett, a law firm that represents Japanese investors in real estate.

Still, a growing number of people in the real estate industry want to avoid asbestos-filled buildings.

Besides worrying about the cost of removing the asbestos, these people have another worry: How much lenders or owners will have to pay if they are sued by cancer victims for owning or financing a building that has asbestos.

Although there have been no court cases dealing with the issue, building owners would appear more vulnerable than lenders. Owners of properties of all types are responsible for maintaining safe conditions inside their buildings.

Lenders Also Fearful

But lenders also fear being taken to court by victims of illness who might argue that the lenders never should have facilitated the sale of a building.

"Nobody is really sure how far the liability extends," said Mr. Stoner, the asbestos lawyer. "Banks are concerned that if they foreclose on the building, they are responsible for that asbestos."

In fact, according to Mr. Stoner, the concern does not stop there. Because Federal and state laws dictate how asbestos shall be transported and disposed of, banks fear they could be sued if the asbestos is mishandled long after being removed from their buildings, he said.

Yet another fear, he and others say, is that asbestos laws will become stricter, placing greater pressure on building owners to remove asbestos and making loan defaults more likely.

The result is great uncertainty, real estate experts say — more uncertainty than many lenders are willing to bear. The net result could be fewer players in real estate lending, still higher rates on loans, and higher rents as landlords pass on their increased costs to tenants.

Mr. **Synar**. Now this article describes the difficulty building owners in New York have encountered trying to sell buildings which contain asbestos, Mr. Emison. Under these circumstances, I think it's reasonable to expect that there will be increased market pressure to get asbestos out from buildings, is that correct? And that New York's not prepared either, are they?

Mr. **Emison**. The State of New York?

Mr. **Synar**. Yes.

Mr. **Emison**. They don't have a large number of people inspecting. And they have not delegated, they have not taken delegation of the program.

Mr. **Synar**. All right. Your data shows an increase in NESHAP inspectors for 1989, bringing the number of full-time inspectors to 10, which includes adding another inspector to region II. But even that's not enough, is it? Given what the demands of New Jersey and New York, is it?

Mr. **Emison**. It would be very hard to inspect all of those with those resources.

Mr. **Synar**. Just 10, that's correct. Now, we've been focusing here on inspectors, but the fact is also, Mr. Emison, that when you make these kind of across-the-board cuts, the whole process is affected. In fact, the reductions mean reductions in enforcement actions that are issued. It also means enforcement actions followed up on too, it's just not inspections, is it?

Mr. **Emison**. What it does, it ratios back on the guidance, the ability to provide guidance, the number of people providing the oversight, of the overall program, not just the inspections.

Mr. **Synar**. So the overall program is cut back, all the way through.

Mr. **Emison**. Yes, sir. And this part is not unique to asbestos. That's an artifact of the way we approach the workload problem.

Mr. **Synar**. I hear you. Now I'd ask unanimous consent at this point, that a summary sheet of concerns identified by EPA regions in this program as part of the recent budget process be included in the record.

[The information follows:]

— Original

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Draft Analysis of Asbestos Demolition/Renovation Resource Allocation and Expenditures

DATE: JAN 19 1988

FROM: Bernard E. Turlinski, Chief
Air Enforcement Branch

TO: Air Compliance Branch Chiefs, Region II, IV, V, VI, IX
Air Program Branch Chiefs, Region I, VII, VIII, X

As we discussed at the Air Branch Chiefs' Meeting in Las Vegas, Region III agreed to conduct a survey of the Regional asbestos programs. One of the purposes of the survey was to evaluate and compare the amount of resources that the Regions actually expended in implementing the program versus the amount of resources that the Regions are presently allocated in the workload model.

Attached is a draft compilation of the data collected and an explanation of the method we used to collect and evaluate the data. Table 1 is a summary of the FTEs that were allocated and expended for implementation of the asbestos demolition/renovation programs. We estimated the FTE expenditures from the data that was supplied to us by each of your Regional Asbestos Coordinators (RACs) and from data that was extracted from Headquarters' SPMS summary.

Table 2 is a compilation of the FY-87 statistics obtained from Headquarters' SPMS summary and from each RAC. This data was used to estimate FTE actually expended. Table 3 indicates the pricing factor that was assigned to each particular activity listed in Table 2. The pricing factors, as explained in further detail in Table 3, were derived from the FY-88 Workload Model, where possible, and through our best estimate and other Regional estimates of the time expended for each activity. We also canvassed the RACs for uses and needs of additional resources if made available.

I remind you that this package and analysis is a draft. Please review the data for your Region and advise me of any revisions or suggestions you may have. Responses are needed as quickly as possible, preferably within five (5) days, since we may want to use this data in the FY-89 resource model. After receiving your comments, I'll finalize the analysis and forward it to John Rasnic.

Thank you for your cooperation and assistance in this study. If you have any questions or comments concerning this study, please call me at (FTS) 597-3989 or Ron Patterson of my staff at (FTS) 597-6550.

Attachments

NEEDS FOR ADDITIONAL RESOURCES

- Perform field work to verify notices. (Region 1)
- Develop a more effective and comprehensive non-notifier detection program. (1,3,5,9)
- Hire personnel to analyze and record asbestos removal notices and possibly input the notices into a personal computer or into CDS. (2,5,9)
- Hire technical personnel to respond to telephone inquiries, congressionals, FOIAs and other correspondence. (2,4,6,9)
- Procure safety equipment, cameras to document violations, and conduct additional inspections. (2,3,8)
- Procure and utilize a personal computer to track notifications. (4)
- Receive more training in conducting inspection. (2,6)
- Conduct more detailed investigations of the information provided in the asbestos removal notifications, possibly by hiring a civil investigator for these duties. (3)
- Establish better filing and tracking systems. (4,10)
- Dedicate more time to overview delegated agencies. (4,5,7)
- Inspect every active contractor at least once per year. (8)
- Pursue more enforcement cases target ed to overfiling on state-discovered violations. (8)
- Conduct two (2) inspector inspections (buddy-system). (9)
- Increase resources to reduce the backlog of work. (3,5,9,10)
- Provide greater outreach and technical transfer to the public. (10)
- Develop consistent policy guidance on asbestos issues. (10)
- Inspect landfills. (3,5,9)
- Conduct co-inspections and cross-check notices with the states. (3,7,9)

Mr. Synar. And I would just note that for the record, that four regions identified getting caught up on the backlog as a need for additional resources. That's the only way they're going to make it. And I just wanted to include that into the record so that you would have that too.

Let's go into another area. As you know, EPA relies heavily, as Mr. Emison pointed out, on the States for enforcement of the NESHAP program, and so at this time, let's take a look at that. And I'd ask unanimous consent that data regarding the State's NESHAP inspectors be included in the record. OK. Now, as you can see from this, the State effort is obviously uneven. Many States have no, or only one full-time inspector. Some have very limited additional time devoted to that, even by part-time inspectors. If you take into account travel time and the difficulties of getting into the site when work is actually going on, the question really is that, how confident, Dr. Moore, can we be that there is adequate inspection going on throughout the United States?

Dr. Moore. Well, I think that you've put your finger on an issue, Congressman, that is a very real one. And that is that the presence, the enforcement presence, or the monitoring presence, whether it be the Federal, or whether it be a State, or whether it be the combination of Federal and State as we currently know it, probably is not adequate for the level of effort that is currently underway, and I suspect will increase, as the New York Times article for example, might highlight, in commercial buildings.

Mr. Synar. Let's look at a specific example. According to an audit report in Florida, one of the reasons that the State gave for such a low inspection rate relative to the number of notifications was that many removal projects occur on the weekends. Now, how widespread is the problem of projects that are being done at night and on the weekends, when there's no inspector on duty? Do you have any indication of how many are being done like that?

Mr. Emison. I don't have any data on that.

Mr. Synar. I mean that would seem like it would be natural because that's when people are not in school and are not in the buildings.

Mr. Emison. I don't believe we collect information about time of removal.

Mr. Synar. Well, you know, Dr. Moore. I think you were here. The inspector general pointed out in their testimony, the importance of oversight of the States to ensure that the program was properly implemented. How are we going to improve this oversight?

Mr. Emison. We agree, Congressman, with the findings that the IG arrived at in terms of needing to improve the program. And we have established a new asbestos strategy to deal with the deficiencies that the IG flagged, and in fact, the IG has informed us that if we are successful in implementing that strategy, that it would deal with the concerns that they identified. And we are moving to deal with targeting our activities more on contractors, rather than on just the notifications themselves. We are beefing up our training program to deal with getting our inspectors better trained and getting them stronger safety training. We are working to provide higher quality inspection by providing them specific, detailed checklists, that they should use to go through to do this. We have also provided a series of safety guidance on the activities that the IG has identified, and have laid out an oversight program that involves headquarters oversight at the regions, the regions working with the States during their section 105 grant, midyear and end of year reviews, the use of the National Air Audit System, which our regions use to work with the States, to oversee the asbestos, or the whole air program, but in this particular case, it would be the asbestos.

Mr. SYNAR. Mr. Emison, you're going through a great litany here of all the things you're doing for us, and yet, it appears to me from everybody who's testified before you that the rhetoric is not meeting up with the action. Let me ask you something here. Because you're really focused in on where I'm trying to go with this. Which is, if you're going to do better oversight, you've got to do it with the States. I'd ask unanimous consent that information provided to this subcommittee regarding these oversight reviews that you just spoke about that were conducted during 1988 be included in the record.

[The information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

RECEIVED

MAY 17 1988

Honorable Michael L. Synar
Chairman, Subcommittee on Environment, Energy
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As a follow up to John A. Moore's April 22, 1988, letter to you, enclosed are the final responses to questions 9, 10, 15, 17, 18, 20 and 21. Please note that we included as Appendix I, the detailed breakout by state on the number of full and part time state inspectors (Question 10). Where the regions provided the information, we included the amount of time the part time state inspectors devoted to the D&R program.

In Appendix II we included the materials we have received to date from the regions pursuant to questions 15 and 17. As additional materials are received, we will forward them to you. At the latest, you should receive all materials by May 20.

Sincerely,

Gerald A. Emison
Director
Office of Air Quality Planning
and Standards

Enclosures

cc: Joyce Dain (w/o Appendix II)
Susan Sarason (w/o Appendix II)

Region X: Region X state tracking system consists of quarterly reports that are submitted by each state and local Air Pollution Agency delegated NESHAP authority.

- The quarterly reports include the number of notifications received, the number of violations, and the number of inspections conducted.

Individual case files can be requested from the state or local agency. Decisions of the State Hearing Board are reviewed. Some of these hearings have been attended by agency staff.

"Friend of the Court" type briefs have been filed with a Hearings Board by Region X legal counsel, where we cannot support decisions by the Board.

Docket is included in Appendix II.

17. Please provide copies of all reports of oversight reviews of state NESHAP programs conducted by the Environmental Protection Agency during Fiscal Year 1988.

Shown below by region are the number of oversight reviews done in FY 88 and any additional comments the regions made. Copies of reports are provided in Appendix II where we have received them to date. Additional reports will be provided when received.

Region I: Region I conducted two state audit reviews of the asbestos demo/reno program in FY 88 in accordance with the questions set forth in the Guidelines for Auditing Compliance Assurance Activities for FY 1988-1989. The reports on these reviews are in draft form and can be forwarded to you when they are finalized. We also conduct quarterly grant updates to track the NESHAP program requirements in the state grants.

Region II: The asbestos D&R program is not delegated, therefore, there are no D&R oversight reviews.

Region III: One completed in FY 88: Delaware (copy in Appendix II) two more projected in FY 88: West Virginia and D.C.

Region IV: 6 - MS, GA, SC, TN, Knoxville and Huntsville. With the exception of MS, copies will be provided when finalized. MS and 105 Questionnaire are included in Appendix II.

Region V: 4 NESHAP audits - 3 State agencies (Illinois, Indiana and Ohio) and 1 local agency (Cleveland, Ohio). Illinois, Ohio and Cleveland reports in draft - Indiana draft report being prepared. Reports will be available for distribution when final. No oversight inspections are being conducted.

Region VI: We will make the FY 88 oversight reports available when they become final. FY 87 oversight reports are included in Appendix II.

Region VII: Zero. Region VII conducted one state asbestos NESHAP audit in FY 87. Region VII projects that three (3) local agency asbestos NESHAP audits will be conducted in the third and fourth quarter of FY 88.

Region VIII: One. Report not yet complete.

Region IX: Region IX has not conducted any formal oversight reviews of state NESHAP programs in FY 88. The Region recently sent out a comprehensive audit questionnaire to all delegated state and local agencies which is designed to give the Region a solid understanding of the status of these programs. A copy is included in Appendix II. The questionnaire responses will be used to identify board problem areas needing further attention, to aid in the development of an audit protocol, and to select agencies for office audits.

Region X: An oversight inspection report is included in Appendix II.

Mr. Synar. The reason I'm doing this is to just see whether or not that commitment that you spoke about has historically been there.

From this information that you have before you, it looks like less than half of the States are even being looked at during fiscal year 1988. Now since the States are the heart of the asbestos NESHAP program, as you pointed out Mr. Emison, why aren't more States being examined?

Mr. Emison. Let me go back and answer one question earlier, if I could, Congressman.

Mr. Synar. All right.

Mr. Emison. It's very hard to judge the strategy that I just described, since we have formulated it over the past 9 or 10 months and put it in place on March 31. The oversight that you're referring to here, is but one of a piece of the oversight. We also meet with our regions, our regions meet with the States, going through their grant commitments and how well they are carrying that out.

Mr. Synar. Yes, I mean, but obviously, we can look at the individual pieces and see whether or not the pieces if done adequately, make up a good whole. And right now, I don't like what I'm seeing about the pieces.

Mr. Emison. Congressman, I agree with you. We were not satisfied with the asbestos program as it stood. And that's why we have moved to try to do the kinds of things we think will beef it up. Whether it will be beefed, whether it will actually be successful or not remains to be seen. But we think that laying out the new strategy that we have and putting additional resources in there, both are requisites to try to deal with the deficiencies that bother you, and frankly bother us.

Mr. Synar. Well, let's look at some of those deficiencies. Because one of the keys to solving it is manpower. And I'd ask unanimous consent at this point that information regarding the number of people conducting these oversight reviews be included in the record.

[The information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

RECEIVED

MAY 17 1988

Honorable Michael L. Synar
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Committee on Government Operations
House of Representatives
Washington, D.C. 20515

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Sincerely,

Gerald A. Emison
Director
Office of Air Quality Planning
and Standards

Enclosures

cc: Joyce Dain (w/o Appendix II)
Susan Sarason (w/o Appendix II)

19(a). For Fiscal Year 1988, according to region, how many staff are conducting oversight reviews of the NESHAP program on a full time basis? On a part time basis?

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	0	0	1	0	0	0	0	1	0	0	2
PT	1	0	2	3	6	9	6	0	4	1	32
	(13%)*		(33%)	(1%)	(2%)				(3%)	(33%)	

*percent means percent of their time working on asbestos D&R program.

19(b). Based on the President's budget request for 1989, how many full time and part time staff are projected to be conducting oversight reviews of state programs for Fiscal Year 1989?

	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
FT	0	0	0	1	0	0	0	1	0	0	2
PT	1	0	3	0	6	9	6	0	2	1	28
	(13%)*		(18%)		(2%)				(2%)	(33%)	

*percent means percent of their time working on asbestos D&R program.

20. During Fiscal Year 1988, how many state inspectors from how many states have participated in the Asbestos NESHAP Inspection Workshop? How many participated in FY 1987?

	I	II	III	IV**	V	VI	VII	VIII	IX	X	Total
FY 88	6	0	23	0	37	15	18	0	44	0	143
	(3)*		(6)		(5)	(3)	(1)		(18)		(36)
FY 87	2	0	18	41	25	40	10	0	0	30	166
	(1)		(6)	(8)	(12)	(4)	(2)			(2)	(35)

*number in parenthetical denotes the number of states and/or locals that participated in the Asbestos Inspection Workshop.
**2 workshops scheduled by end of FY 88 with 50 state staff to attend.

Mr. **Synar**. Again, another piece of it. Now although the number of inspectors will increase next year as you pointed out, the number of people projected to be devoted to oversight in 1989 will drop off substantially. And realistically, Mr. Emison, can we expect good oversight when you've got less people doing it than previously?

Mr. **Emison**. We think that the program that we're laying out will do absolutely the best that we can with the resources that we have available to us. What is also going on that is not shown here is the action within the rest of the air program in terms of the competing needs that we're faced with. In the best of all possible worlds, I would certainly not only, not like to see the numbers go down. I would like to see those numbers go up. But we don't have that available to us right now. And we think that the strategy that we have laid out gives us the best leg up possible to exploit those resources.

Mr. **Synar**. OK. Let's talk about that strategy.

Mr. **Emison**. Where they need to be.

Mr. **Synar**. You seem to be hanging your hat on that. How are you going to get the States to do these things that you've just laid out?

Mr. **Emison**. We've worked through the strategy with the States. With the State and territorial air pollution program administrators in developing the strategy and discussed with them. They feel that the strategy is one that they can carry forward and implement although I'm certainly not in a position to speak for STAPPA. But we have worked through with them, the content of that strategy.

Mr. **Synar**. Well, let me tell you about what we've found out from our oversight reports that you did, with respect to the States, if you're relying on the States and their cooperation in the strategy. What we found, I think you would admit, is that there have been some severe problems with the State programs, including a failure to conduct the inspections, just to start off with. The few oversight reports that were issued were very few in number. In some cases some of them found problems identified that the inspector general spoke of: Things like collecting civil penalties; lack of documentation of inspections; failure of inspectors to enter a site because they don't have safety equipment.

Now, if you're hanging your hat on this whole strategy on the States' cooperation and ability to do it and if a State fails to correct the problems, and you don't have the personnel to check up or do the followup, how are we going to guarantee or give the American people any confidence that this problem's being solved?

Mr. **Emison**. Well, I think that what we have identified that you can't continue to do. You can't do what we were talking about here and stay in a stable situation. We're going to need to increase resources. Increase resources for the States through the grant program, and increase resources on our side for our people in the regional offices to carry this out. Now whether that is enough resources, you said that you couldn't estimate that. And I can't estimate that either. But I am pretty certain that where we stand today, it's very hard to stay in a stable situation.

Mr. **Synar**. Let's talk about that grant money, because I think that's an important area. If you reduce or take away the money from a State, you have absolutely no guarantee that the State has available funds to do the job, do you?

Mr. Emison. You just take the money back from the State?

Mr. Synar. Yes. If you just take it back.

Mr. Emison. I don't know of any way to try to make States do things if you're not, don't have some sort of carrot involved.

Mr. Synar. Now EPA could take away a delegated NESHAP program for failure to do an adequate job and implement the program. Is that correct?

Mr. Emison. Yes, sir, that's right.

Mr. Synar. Have you done that anytime during the last 8 years?

Mr. Emison. I don't believe so.

Mr. Synar. Now if you look at, if you took the program away, you'd have to obviously increase the Federal workload in that area, wouldn't you? Because you'd have to take it over, wouldn't you?

Mr. Emison. Generally, when we have taken over a program from the States, we have taken the money associated with that activity from their 105 grant. To carry it out. The best example there is when we promulgate Federal implementation plans that are State obligations.

Mr. Synar. Under what conditions, Mr. Emison, would EPA take away a State NESHAP program?

Mr. Emison. The general proviso is when the situation where we have absolutely no confidence that the State will carry out the program and no likelihood in the future that they can get it to a particular point. And we judge that also against the fact of what kind of activities we would have when we ran the program also.

Mr. Synar. Is there any State that would qualify under those definitions?

Mr. Emison. We have not taken the program back from anyone, because in our opinion, the State, the condition of the program right now, that the program is better operated by the States with EPA backup as it presently stands than it would be if we were to retrieve the program.

Mr. Synar. So let me see if I've got that straight. We have basically outlined here how the States aren't really doing it. The inspector general points out to the real holes that exist. You all say you're not going to take the NESHAP program back because you've concluded that EPA can't run the program any better than the States. Which tells me that there's a potential failure there by the States. But for you to take it over would even be a bigger failure.

Mr. Emison. I think that what we're saying is that the best way to work on this is not to pull it back and have EPA do it, but to try to improve the States' activities. To get them back up to a proper level. If you pull the whole asbestos program back to EPA, you're talking about, as you pointed out earlier, going from I think you said 17,000 inspections, notifications, up to 50,000. And the chances of, when you pull it back, you were pointing out about the lagtime between what you see as resources and when the resources actually come in the door, 1½ or 2 years, you're going to be dealing with a gap of time there which is enormous presuming Congress would appropriate the resources that would be necessary to cover that. And that would be something. We think it's better spent trying to work through and improve the States' activities in this area. Rather than trying to run an EPA program like that.

Mr. Synar. You said that with a straight face.

Mr. Emison. I believe it. I do believe that. That you're going to get your best program with the States doing it onsite than you will if you don't.

Mr. Synar. Now I don't have any disagreement that local problems can be solved by local people better. I don't think anybody who's ever served in the Government doesn't agree with that. The problem is that if you didn't. I mean you were here this morning to hear the school boards. You were here to hear the inspector general, you were here to hear the people who are, quote, on the local level. And they aren't ready. And they need help.

Now let me get into the inspection program for the new school rule, because I think that is something that has come up often. The rule, which was replaced by the new law, required the schools to inspect for asbestos by June 1983. And to inform parents and employees of what was present. Is that correct?

Dr. Moore. Correct. Right.

Mr. Synar. I'd ask unanimous consent that data supplied by EPA regarding the compliance with the old rule be included into the record.

[The information follows:]

ASBESTOS IN SCHOOLS RULE COMPLIANCE STATISTICS

	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987
Inspections (LEA's)	207	1,918	2,147	3,213	2,694
Notices of Non-Compliance	52	1,025	752	1,074 estimated	1,131 estimated
Civil Complaints	0	82	443	405	549
Violation Rate	25%	58%	56%	46%	63%

TOTALS:

Inspections = 10,179
Notices of Non-Compliance = 4,034
Civil Complaints = 1,479
Estimated Local Education Agencies = 30,428
Average Violation Rate = 54%

Mr. Synar. Now it shows if I'm correct, 10,179 inspections of local education agencies were conducted over 5 years. Now some of these may have been reinspections, especially after the new law was approved. But even assuming EPA went out to 10,000 LEA's, at the rate we're going, it looks like it would have taken us at least, by our calculations, 15 years to get to all of the LEA's. Within each of those local education agencies, did EPA get to every school?

Dr. Moore. No.

Mr. Synar. They didn't, Dr. Moore?

Dr. Moore. No.

Mr. Synar. And of those districts which were inspected, a large number were found to be out of compliance, weren't they?

Dr. Moore. That's correct.

Mr. Synar. How many? Do you know?

Dr. Moore. I don't remember.

Mr. Synar. Would the overall noncompliance rate be somewhere in the neighborhood of 54 percent?

Dr. Moore. Fifty to sixty percent, as far as noncompliance in one form or another, as I remember. We would say that there was somewhere around 25 or 30 percent that would be something of a significant noncompliance.

Mr. Synar. That would be significant. The old rule was relatively simple. It required inspections of schools for asbestos, notification of parents, and recordkeeping. So the inspections were relatively straightforward, isn't that correct?

Dr. Moore. Yes, sir.

Mr. Synar. Now as you point out, most of the provisions in AHERA do not become effective until October of this year, or after July 9, 1989. That means that fiscal year 1989 is the year for the compliance push. And that's when it should begin. Is that correct, Dr. Moore?

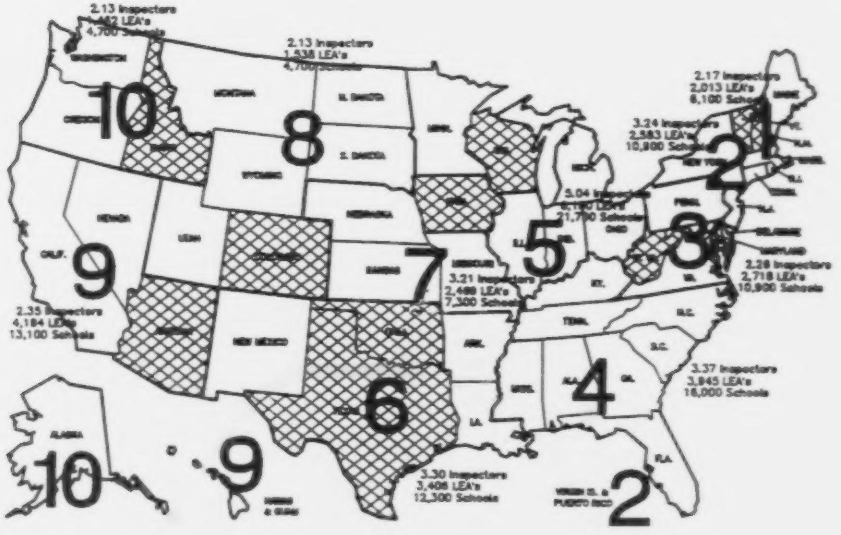
Dr. Moore. That would be correct as far as the majority of that rule is then enforceable. In that time. After that date you mentioned in July.

Mr. Synar. Now let's look at a chart, consisting of EPA data which I would ask to be included in the record under unanimous consent.

[The information follows:]

FY 89 Inspectors – Asbestos in Schools

By EPA Region



2.13 Inspectors
4,700 Schools
2.13 Inspectors
1,538 LEA's
4,700 Schools
2.17 Inspectors
2,013 LEA's
8,100 Schools
3.24 Inspectors
2,583 LEA's
10,800 Schools
3.04 Inspectors
21,700 Schools
3.21 Inspectors
2,488 LEA's
7,300 Schools
2.28 Inspectors
2,718 LEA's
10,900 Schools
2.35 Inspectors
4,184 LEA's
13,100 Schools
3.37 Inspectors
3,945 LEA's
16,000 Schools
3.30 Inspectors
3,408 LEA's
12,300 Schools
10
8
1
2
5
3
7
9
6
4
10
9
2
WASHINGTON
OREGON
IDAHO
MONTANA
N. DAKOTA
S. DAKOTA
WYOMING
MINN.
WIS.
MICH.
NEW YORK
MAINE
VT.
N.H.
MASS.
R.I.
CONN.
N.J.
PENN.
DELAWARE
MARYLAND
OHIO
ILL.
IND.
IOWA
NEBRASKA
NEVADA
CALIF.
UTAH
COLORADO
KANSAS
MISSOURI
KY.
W.
VA.
N.C.
TENN.
S.C.
ARK.
OKLA.
ARIZONA
NEW MEXICO
TEXAS
LA.
MISS.
ALA.
GA.
FLA.
ALASKA
HAWAII & GUAM
VIRGIN IS. & PUERTO RICO

▨ States with asbestos cooperative enforcement agreements

LEA = Local Education Agencies

office for the asbestos program in FY88 are shown below. These figures are determined jointly by Headquarters and regional managers, and are based on the numbers of schools and local education agencies (LEAs) in each region.

Region	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL	
OCM	0.17	0.24	0.26	0.37	0.54	0.30	0.21	0.13	0.35	0.13	2.7	FTEs
OCM AARP	2.0	3.0	2.0	3.0	4.5	3.0	3.0	2.0	2.0	2.0	26.5	FTEs
HAAB AARP	3.0	3.0	2.0	2.0	5.0	3.0	4.0	2.0	3.0	2.0	29.0	FT Person
HAAB AARP	-	1.0	-	-	1.0	-	-	-	-	-	2.0	PT Person

6. (a) For each region, how many state inspectors, on a state by state basis, are currently working full-time in the asbestos-in-schools program?

(b) How many state inspectors, on a state by state basis, are currently working in the asbestos-in-schools program on a part-time basis?

Response: EPA currently has asbestos cooperative enforcement agreements in place with 11 states. These are the only states for which EPA has information on numbers of inspectors.

		Inspectors	
Region	State	Full Time	Part Time
Region I	New Hampshire	1	0
	Vermont	0	3
Region III	Maryland	4	0
	West Virginia	2	1
Region V	Wisconsin	2	1
Region VI	Oklahoma	2	0
	Texas	2	1
Region VII	Iowa	2	1
Region VIII	Colorado	0	1
Region IX	Arizona	1	0
Region X	Idaho*	-	-

*Idaho cooperative agreement has not yet commenced and inspector resource levels have not been determined.

7. (a) In each of the regional offices, on the basis of the President's request for funds for FY89, how many EPA inspectors are projected to be assigned to the asbestos-in-schools program on a full time basis?

(b) How many will be assigned on a part time basis?

Response: We expect to maintain about the same level of staffing in FY89 that we have for FY88.

8. For each region, for FY89, how many state inspectors, on a state by state basis, are projected to be assigned on a full-time basis to the asbestos-in-schools program? On a part-time basis?

Response: We had 16 full-time and 8 part-time inspectors in FY88. We anticipate maintaining the same level for FY89 although we have not started negotiating cooperative agreements with the States for FY89.

9. Responses to Questions 9, 10, 15, 17, 18, 20, and part of 21 require collection of information from our Regional Offices. In most cases the Regions must, in turn, collect information from the States.

Although EPA Headquarters estimates the FTE needs for the Regional offices, there is not a specific line activity that addresses all aspects of the Asbestos program. In addition, Regional Offices have discretion to reallocate resources among programs as necessary. Therefore, the actual numbers of EPA inspectors and EPA personnel employed in NESHAP asbestos programs are maintained at the Regional Offices. Likewise, actual numbers of state and local NESHAP asbestos personnel are maintained at the state and local offices. It is estimated that three to four weeks will be needed to obtain the information from our regional offices where they are the source of that information and six to eight weeks for our regional office to obtain State and local information. Even within this time, complete information is influenced by state/local cooperation.

11. Please provide copies of all documents prepared by Environmental Protection Agency officials, or by contractors working for the EPA providing estimates of and/or requests for staffing needs for the asbestos-in-schools program, including but not limited to, staffing for inspection activities for FY88 and FY89.

From:

- 7 -

Regional Decision Unit Work Year Distribution Proposal
Operating Year 1989, dated 3/24/88

SECTION 6 ASBESTOS-IN-SCHOOLS COMPLIANCE MONITORING

The asbestos-in-schools rule requires Local Education Agencies (LEAs) to identify and maintain records of schools having asbestos. The Model distributes 2.7 FTEs based on two indicators: the Regional distribution of public and private schools (weighted 40% or 1.13 FTEs) and LEAs, i.e., public school districts, Catholic dioceses, and all non-public, non-Catholic LEAs (weighted 60% or 1.6 FTEs). For the purposes of the workload model process, the number of non-public, non-Catholic schools is defined as the number of non-public, non-Catholic LEAs. These FTEs are for Federal inspections only and do not reflect the total level of resources devoted to this program.

Region	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
Schools (x 1000)	6.1	10.9	10.9	16.0	21.7	12.3	7.3	4.7	13.1	4.7	107.7
Percent	5.66	10.12	10.12	14.86	20.15	11.42	6.78	4.36	12.16	4.36	100.0%
FTEs	.06	.11	.11	.16	.22	.13	.07	.05	.13	.05	1.10
LEAs	2013	2583	2718	3945	6100	3406	2469	1538	4194	1462	30428
Percent	6.62	8.49	8.93	12.97	20.05	11.19	8.11	5.05	13.78	4.80	100.0%
FTEs	.11	.14	.14	.21	.32	.18	.13	.08	.22	.08	1.60
Total FTEs	.17	.25	.25	.37	.54	.30	.20	.13	.35	.12	2.70

Mr. Synar. That's the chart that we've just put before us. Now for each region, it shows the number of local education agencies, schools, and the number of Federal inspectors projected for fiscal year 1989, based upon the President's budget request for that year. Now the number of inspectors include both Federal employees and those also under contract by the American Association of Retired Persons. Do you have that before you? OK. Now the States that are shaded, as you can see on the chart before you, are those States with which EPA has what is called a cooperative enforcement agreement for asbestos. Now, Dr. Moore, for everyone here, what does a cooperative enforcement agreement mean?

Dr. Moore. Basically, we have an agreement with the State where they will do some of the site inspections, using manpower available to the State. They are not in a position since this is a TSCA-oriented law, to follow up any failure that they found with an enforcement action. They would have to turn that back to the Federal Government.

Mr. Synar. So they're basically relying on the States for inspection. Now EPA relies heavily on that AARP contract to provide personnel for inspection of schools, does it not?

Dr. Moore. Yes, it does, Congressman.

Mr. Synar. Now I'd ask unanimous consent that data provided by you again, regarding its contract with AARP be included into the record.

[The information follows:]

The study conducted in conjunction with the Asbestos NESHAP revision considered the best technology used to control asbestos emissions from manufacturing, fabricating, and milling of asbestos, and the best procedures for removing and disposing of asbestos waste from demolition and renovation of buildings. The recommended revisions to the standard would focus on additional recordkeeping and reporting in order to improve the effectiveness of our efforts in compliance of the demolition and renovation provisions of the regulations.

21. How many people were hired under contract with the American Association of Retired Persons for the asbestos program for FY87 and FY88? How many are projected for FY89?

Response: EPA hired the following FTE levels in FY87 and 88, and projected for 89, to perform compliance inspection and clerical functions.

Region	I	II	III	IV	V	VI	VII	VIII	IX	X	Region Total	HQ	Region & HQ Total
OCM 1987	3.9	4.8	3.9	4.2	8.8	5.3	5.1	3.9	3.6	3.5	47.0*	5.7	52.7
OCM 1988	2.0	3.0	2.0	3.0	4.5	3.0	3.0	2.0	2.0	2.0	26.5*	5.7	32.2
OCM 1989	2.0	3.0	2.0	3.0	4.5	3.0	3.0	2.0	2.0	2.0	26.5	5.7	32.2

*(The reduction in AARP FTEs from FY87 to the current level is strictly related to available AARP resources. In FY87, EPA had $1.8 million in available resources whereas for FY88 and FY89, EPA has only $1.36 million in available resources. Faced with overall reductions in funding, the Agency chose to reduce the AARP grant while supporting asbestos compliance activities through cooperative enforcement agreements with the States.)

EPA hired the following people (AARPs) in FY87 and FY88 and projected for FY89 to perform work in HAAB.

Region	I	II	III	IV	V	VI	VII	VIII	IX	X	Region Total	HQ	Region & HQ Total
HAAB FY87													
FT	4	4	3	3	7	4	4	3	4	3	39	1	40
PT		3			1		3				7	1	8

HAAB personnel numbers in the preceding chart should be regarded as somewhat fluid in the sense that the AARPs are being cross-trained to perform other functions.

22. (a) For FY87 and FY88, list all the enforcement actions brought by the EPA for violations of the Worker Protection Rule, Asbestos Abatement projects (40 CFR Part 763), identifying the penalties imposed and the status of each case.

Response: The Worker Protection Rule enforcement response policy called for Notices of Non-compliance (NONs) for first-time violators. Subsequent or repeat violators were to be assessed an administrative penalty. In FY87, EPA issued 5 NONs and in FY88, EPA issued 2 NONs. Listed below is the status of all administrative actions:

1987 - University of Missouri, Kansas City, MO
Proposed penalty: $50,000
Case currently in negotiation

1988 - none to date

22. (b) How many EPA inspectors are assigned to enforcement of the Worker Protection Rule during FY88 on a full-time basis; on a part-time basis?

Response: See question 5.

22. (c) How many are projected for FY89 on a full-time basis? on a part-time basis?

Response: See questions 5 and 7.

22. (d) How many notifications under the worker protection rule did EPA receive during FY87 and to date during FY88?

Response:
The Worker Protection Notification Rule encompasses only those States not covered by either the OSHA asbestos standard or an OSHA approved asbestos State Plan. Therefore, this rule covers only 27 States.

EPA conducted 77 Worker Protection inspections in FY87 and 4 in the first quarter of FY88. Most of these inspections were prompted by notifications made under the Worker Protection Rule. The remainder are tips and complaints.

Mr. Synar. Now in 1987, there were 52.7 full-time equivalents devoted to compliance. Now in contrast, in fiscal year 1989, when compliance efforts really need to get underway as you just stated previously, there will be 32.2 full-time equivalents, which is a drop of 39 percent. Why is that, Dr. Moore?

Dr. Moore. Well, as the table that you just passed out in reference shows, that that would be a level in 1989 similar to the level in 1988, which is reduced from the level in 1987. The point I'd like to make is that the date where we need a strong enforcement presence is fairly late into the fiscal year. July as opposed to October. It is our plan in putting together the 1990 budget which would start 3 months after that date that that would be where you'd want to see the significant increase in resource that I think you're correctly alluding is going to be needed.

Mr. Synar. Doesn't look good, does it?

Dr. Moore. Well, it clearly shows that if you don't have a 1990 increase in resource, you won't be up to the task.

Mr. Synar. Now this thing that I just put in the record, says that the AARP grant will be reduced while supporting the asbestos compliance activities through the cooperative enforcement agreements. Dr. Moore, isn't it true that EPA's funding for toxic substances enforcement grants has stayed about the same, at about $2.2 million for 3 years, including the amount it requested for 1989?

Dr. Moore. Generally.

Mr. Synar. So, basically then, doesn't it mean that we're having an overall reduction in enforcement across the board here?

Dr. Moore. I think we can't lose sight of the fact that the Office of Toxic Substances as well as the compliance people that work on TSCA issues have had increased responsibilities over the last several years through passage of ASHAA and then more recently, the AHERA Act, and then in addition to that, title 3 of the Superfund authorization, in large part, the data collection, has fallen on that office. We basically, with the exception of the title 3 activities, are having to do it, out of whole cloth with the resources that were available before those acts passed. No question about it.

Mr. Synar. All right. Now let's look at some of these figures on this chart. For EPA compliance inspectors in region IX, which includes the high population State of California and the State of Hawaii, there are 2.35 EPA inspectors including both Federal employees and contractors. That's to cover 4,194 and 13,100 schools. LEA's. Right? Is that correct? Somewhere in that neighborhood? In region IV there will be 3.37 inspectors to cover 3,945 LEA's and 16,000 schools. Let's look at region VI. This includes my home State of Oklahoma, which has 3.5 EPA inspectors to cover 3,406 LEA's and 12,300 schools. Now you have a cooperative agreement with Oklahoma, and with Texas. Our figures show that Oklahoma has two full-time inspectors and Texas has two full-time inspectors and one part-time. Now, Dr. Moore, have you ever driven across Oklahoma or Texas?

Dr. Moore. Parts of Texas. Never had the privilege of driving across Oklahoma.

Mr. Synar. There's a lot of ground for one inspector to cover there, isn't there? Do you think those people can do that, even with the backup personnel they're going to have in the States?

Dr. Moore. Congressman. Even with the best of all resources, I don't believe that an enforcement strategy would suggest that one's goal would be to visit every school district for an AHERA rule or something like that. One would clearly have to come up with a targeted scheme. Given the number of school districts that we have in this country, whether it be in Oklahoma or Texas or elsewhere, the amount of resource that we have, on its good days, barely adequate to the task.

Mr. Synar. Hang on for just a second. I think the bottom line of what we're trying to do here is to see whether or not you will admit to us on the record, that you do have additional responsibilities and that we're going to have a real task at this under the new law. Can I get you to admit that?

Dr. Moore. Congressman, my testimony said that in the final analysis, the law puts the responsibility for a lot of these activities on the State. As you have heard in testimony prior to our appearing on this panel, the States feel that they are in large part still yet ill-prepared for all of the mandates that are required in the act. We have tried hard to invest what FTE we have in trying to help them become prepared, either through seed grants to get them started, through some of the technical assistance with the AARP or other mechanisms. There's no question, given the number of schools that we're talking about that need to be inspected, need to be monitored when they're found to have asbestos is a formidable task. And the amount of resource that we have available this year and through next year, I think is, at best, modest.

Mr. Synar. That's a good way to put it. Modest. I don't mean to be sarcastic. That's an understatement. Would you agree?

Dr. Moore. I think we have a lot of the information that needs to get out there. And I think that the challenge is to find the ways to get it out there through manpower or through other mechanisms so that you can get it into the hands as the gentleman from New York cited, to make sure that the people who are committed have a chance to realize what needs to be done and how it needs to be done so that they in turn can exert their influence.

Mr. Synar. Let's look at that. Because I want to talk about the inspectors themselves. Now the new law requires, Dr. Moore, if I'm correct, that more of the school districts than the old rule did, that the inspector has to look for more, correct?

Dr. Moore. Correct.

Mr. Synar. Now, are more people subject to the regulations under the new rule?

Dr. Moore. No, it would be the same school districts that would be subject.

Mr. Synar. But I mean contractors and inspectors and now.

Dr. Moore. Oh, yes. Yes.

Mr. Synar. Now these inspectors will also have to investigate violations of the Worker Protection Rule, do they not?

Dr. Moore. Correct.

Mr. Synar. Now, the LEA's or the local education agencies, also must ensure proper disposal of wastes, isn't that correct?

Dr. Moore. That's right.

Mr. Synar. And AHERA provides emergency action to be taken when, I want to quote this, "Whenever the presence of airborne asbestos or a condition of friable asbestos-containing material in the school building governed by a local education agency poses an imminent and substantial endangerment of human health or the environment." So those inspectors will have to go out and determine if there is an imminent or substantial endangerment, won't they?

Ms. Vogt. If they find one Congressman. They will know it.

Mr. Synar. OK. Now EPA has the authority to review those management plans to ensure that they're consistent with the regulations, don't they?

Dr. Moore. The primary responsibility for review and approval of management plan is vested with the State.

Mr. Synar. But you can do it too. And you have authority also to make sure that the response actions are properly implemented, is that correct?

Dr. Moore. Correct. Our enforcement activity, or our presence, would be, was it inspected? Was it done by a qualified individual? Was a plan put together? Was the plan filed with the State? And then are they following their plan in the 1989 timeline?

Ms. Vogt. Are they using accredited people when they follow their plan?

Mr. Synar. OK. Well, last week, we did a quick check of the regions to see what experience they were having with enforcement of currently, enforceable provisions in the law. And I'll ask unanimous consent that that information that we obtained be included in the record.

[The information follows:]

EPA REGIONS' ENFORCEMENT OF IMMEDIATELY ENFORCEABLE PROVISIONS OF AHERA

REGION	NUMBER OF STAFF	NUMBER OF INSPECTIONS	NUMBER WITH VIOLATIONS	NUMBER OF ACTIONS
1	2	0	N/A	N/A
2	9	20-25	"Quite a few"	0
3	3	2	1	0
4	1	32	0	N/A
5	4	5-6	3-4	0
6	?	?	?	?
7	2	2	2	1
8	3	2	2	0
9	1	0	N/A	N/A
10	4	0	N/A	N/A

Mr. Synar. Now as you can see. From this information, not many inspections have been conducted. And when they were conducted, EPA is finding a high noncompliance rate in all those regions except one. Dr. Moore, I was just wondering, with an inspection force the size that you have and the duties that I just went through and outlined that they're going to have, how active of an enforcement are we really going to have, given that?

Dr. Moore. I think that we're going to have to strongly rely on States, to also develop a strong presence in this activity. To rely on the Federal presence I think is going to clearly end up with inadequate resources given the size of the task. There are a number of States Congressman that I believe are. A couple of them have already achieved it. But there are a number of States who are on the way to basically taking over the State-operated program under the provisions that were provided in AHERA.

And Massachusetts is the example that comes to mind of a State that of the five areas that we feel are the key elements in a total accreditation program. They have taken over, because they have demonstrated commitment of resources in all five areas. There are a number of other States that have one or two parts of those five commitments. We've got to get more of that in place if we're going to have a total capability in this country equal to the task.

Mr. Synar. Let's look at some specifics of the statute because I think that's important too. There are two key elements in this statute. One is the management plan, which we have been talking about all morning, in which these LEA's identify the extent of the asbestos materials in the schools and what they intend to do about it. The other, or the second part, is the requirement that people who prepare these plans and then carry out the response actions have been accredited. Now these management plans as you all know, have to be completed by October 12 of this year. What happens then, Dr. Moore?

Dr. Moore. The requirement is that the inspection will have occurred and the management plan have been developed if asbestos has been found by that October 12 date. That plan then has to be filed with the appropriate State lead in each and every State. And then nothing happens actually as it relates to that management plan as far as something being enforceable until July 1989. The exception to that would be that if any school district and this is true currently, not just in the future, is taking an abatement action, they must use certified contractors. But there is an interregnum between that October.

Mr. Synar. But the immediate thing is that States have 90 days to review the plans and see if they comply with AHERA and disapprove them, is that correct? What resources do the States have available to do that?

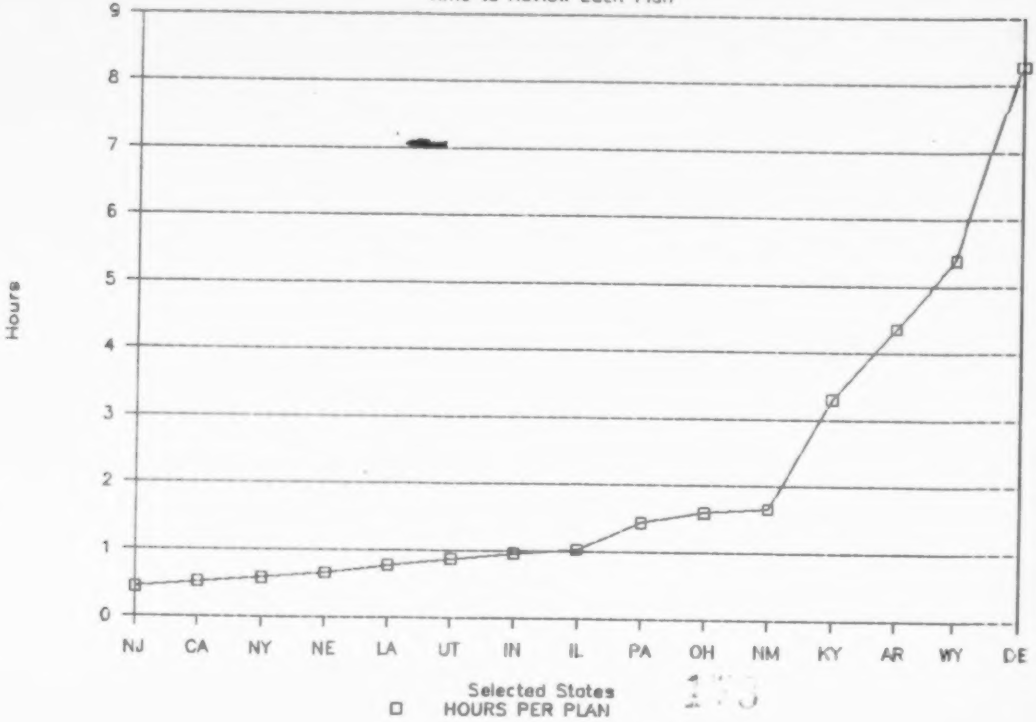
Dr. Moore. I can't speak to what States have generated in the way of their own resource, in an informed manner. What we have done is provided a modest amount of seed grant money this year and in the past year.

Mr. Synar. Let me tell you what we did on your behalf. We went out and made a few phone calls to States to find out how many plans they expect to receive and how many people will be there reviewing. And I'd ask unanimous consent at this time that the data we obtained be included into the record.

[The information follows:]

STATE REVIEW OF MANAGEMENT PLANS

Time to Review Each Plan



STATE REVIEW OF MANAGEMENT PLANS

STATE	NO. OF PLANS	NO. OF REVIEWERS	PLANS PER REVIEWER	HOURS PER PLAN *
NEW JERSEY	5,500	5	1100.00	0.44
CALIFORNIA	16,700	18	927.78	0.52
NEW YORK	15,000	18	833.33	0.58
NEBRASKA	2,200	3	733.33	0.65
LOUISIANA	1,856	3	618.67	0.78
UTAH	1,100	2	550.00	0.87
INDIANA	5,000	10	500.00	0.96
ILLINOIS	7,000	15	466.67	1.03
PENNSYLVANIA	2,000	6	333.33	1.44
OHIO	6,000	20	300.00	1.60
NEW MEXICO	289	1	289.00	1.66
KENTUCKY	580	4	145.00	3.31
ARKANSAS	550	5	110.00	4.36
WYOMING	89	1	89.00	5.39
DELAWARE	290	5	58.00	8.28

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* - Based on the assumption that each reviewer will work 8 hours each of the 60 working days during the review peri

Mr. **Synar**. Now, what this information suggests is that in some cases, reviewers will have the outstanding amount of time of one-half of an hour to zip through each one of the plans. Now, based upon this, Dr. Moore, are you confident that 30 minutes, 30 minutes, is enough time to reach an opinion about whether a plan conforms with the regulations, especially whether the proposed response actions are sufficient to protect human health and the environment?

Dr. **Moore**. Mr. Chairman, I would assume that something that's in the range of a 30-minute review of a plan is basically going to be a records check against almost a checklist of what key elements must be in a plan. And somebody making a quick judgment that indeed they see something in that plan that seems to be responsive to one of those key elements. It can't be anything more than that.

Mr. **Synar**. It seems like, very frankly, that we're relying heavily on the ability of these people who prepare those plans to identify the material, to proper classify it, and then recommend the best action. So, this accreditation is critical, isn't it? And 30 minutes just doesn't cut it, does it?

Dr. **Moore**. I think you're going to have to rely on the fact that the focus of the effort has to be that indeed the person who's done the inspection and is developing the plan, is competent.

Mr. **Synar**. That's fine. You've testified today that EPA has now approved all or part of nine States' programs for accreditation. So, as of today, how many courses have received accreditation by EPA?

Dr. **Moore**. General courses?

Mr. **Synar**. Yes.

Dr. **Moore**. Better than 240.

Mr. **Synar**. Yes. About 240 for planners, contractors, and workers. Now you testified that ultimately it is the States that will have that responsibility. So here we have, if I've got this correctly, you're putting the people at the State level in charge of the accreditation and yet they're really not ready, are they, for that?

Dr. **Moore**. States.

Mr. **Synar**. And we heard testimony this morning raising concerns about the adequacy of your accreditation program. At this time, let me ask unanimous consent to introduce into the record a letter I received from the president of a company formed to write insurance policies for asbestos abatement contractors, which sends its own inspectors out to monitor the work practices.

[The information follows:]

FIDELITY
ENVIRONMENTAL
INSURANCE COMPANY

[illegible]

May 26, 1988

RECEIVED
MAY 28 1988
SUBCOMMITTEE ON ENVIRONMENT,
ENERGY & NATURAL RESOURCES

The Honorable Mike Synar, Chairman
Subcommittee on Environment, Energy,
and Natural Services
B-371B Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I know of your great interest in asbestos issues and am aware of the Subcommittee's ongoing concern regarding the Environmental Protection Agency's (EPA) implementation of the Asbestos Hazard Emergency Response Act (AHERA). I would like to bring some information to your attention.

I am the President of Fidelity Environmental Insurance Company (FEIC), which was formed to provide asbestos abatement contractors with the highest quality insurance coverage possible. Perhaps the most unique aspect of FEIC's operation is the type of policy it writes for this type of work: an occurrence form policy providing $1 million of coverage in the aggregate, either an annual aggregate or, more importantly, a per job aggregate. This represents the most comprehensive coverage currently available for asbestos abatement projects.

FEIC believes that proper work procedures are the key to minimizing long-term liability problems for both the building owner and the asbestos abatement contractor. For this reason, all contractors insured by FEIC must qualify for membership in our trade association. To qualify for membership, the contractor must demonstrate financial strength and stability and meet the highest loss-control standards. FEIC has established stringent work procedures and guidelines which contractors are required to follow. The company has also established a staff of trained loss-control inspectors who rigorously monitor insured work sites to ensure that the contractor's work performance is of the highest quality. This program of contractor approval and job site inspections makes FEIC different from almost every other insurance company in the field.

As you know, all contractors who perform work under AHERA must pass EPA's accreditation program. However, FEIC is not confident that all EPA accredited contractors are capable of performing thorough and safe abatement work in the schools. In part, this is why FEIC has established its own contractor standards rather than simply insuring all contractors accredited under the EPA program.

I would like to highlight three significant problems with the EPA accreditation program of contractors:

1) EPA currently approves contractor accreditation programs by examining the course curriculum and the credentials of the program director. Once approved, EPA will sit in on a course. Unfortunately, the faculty for these programs changes frequently and by sitting in only once, many course instructors will never be examined by the Agency. I must report that the background of many of these instructors is flimsy at best.

   Poor instructors mean poor programs and the result is contractors who have not been properly trained.

   Another problem with EPA's accreditation is that no experience is needed prior to taking a course. After passing the five-day contractor course, anyone can go into the business, even if the person never worked a day removing asbestos. FEIC believes this is a tremendous weakness in the program. There is a strong need for prior experience before becoming a fully-accredited contractor.

2) Even if the accreditation program was perfect, EPA apparently works under the assumption that by producing information and guidance, it will be used. Unfortunately, just because one has knowledge, does not mean it will be used. EPA's enforcement is presently quite limited and contractors know this. As a result, short cuts are often taken. I realize that EPA's enforcement budget is limited, but more must be done to ensure what is being learned in the classroom is applied in the field.

   I am sorry to report that from what FEIC has observed, the Agency has no strategy for following up on contractors who are accredited and plan to now work in schools.

3) Recordkeeping is less than adequate. It is impossible to reconstruct jobs from the records because they have generally been so poorly kept by contractors. Thus, it can be extremely difficult to learn whether or not a job was performed properly.

   EPA should be doing more to ensure that contractors are keeping adequate records of their work.

As a result of the weaknesses with EPA's accreditation of contractors, FEIC is essentially accrediting every contractor and approving each job the company insures. To date, we have received applications from a little more than 105 contractors for FEIC insurance. We have rejected close to 30, or about 25% of the total number of applicants. Among the rejections are contractors who have been accredited by EPA, New Jersey and New York. Both states have programs acknowledged by the Agency to be at least as stringent as EPA's program. In our minds, though, the programs are not tough enough.

FEIC believes that with these shortcomings, we cannot feel confident about the current state of contractor accreditation. We will continue to insure only those contractors who meet our strict requirements in the schools. However, more must be done on the federal level to ensure that the work done in schools is properly performed.

I hope this information proves helpful in your continuing effort to ensure that the schools are made safe once and for all from the hazards of asbestos.

Sincerely,

Emil D. DeVito
President

EDV:am

Mr. SYNAR. Now let me read from this letter. It says, based upon its experience, the insurance company concludes and let me quote it, is "not confident that all EPA accredited contractors are capable of performing thorough and safe abatement work in the schools." The letter goes on to say, "[t]o date, we have received applications from a little more than 105 contractors for FEIC insurance. We have rejected close to 30, or about 25% of the total number of applicants. Among the rejections are contractors who have been accredited by EPA, New Jersey, and New York."

Obviously, these are only two people that are complaining about the accreditation. But if EPA's accreditation process is the primary quality check for the process, how are we going to do that? I mean, I'm concerned. I mean, look at this. Tell me this. Explain. Talk to me about this.

Dr. MOORE. I think you heard this earlier this morning. And as this letter might indicate, you've got some individuals who by their own experience, are suggesting that some people are not receiving what we would all hope they would have received through participation of that training course. Or if they have assimilated it during the course, they aren't putting it into practice when they get back into their respective cities and towns. While the data that you cite in this letter by the Fidelity Environmental Insurance Co. I think is disquieting in that they feel that for somewhere's around one-quarter or one-third, they're not going to underwrite insurance. And we need to understand more as to what led to their rejection in that area. To find out what the root problem might be that needs to be addressed. I am encouraged however, that you've got an insurance company out there that is basically taking such stringent points of view. Because my sense is the quickest way to get some of these contractors to really tow the line is when they come to the sad realization that they aren't going to get insurance underwriting and therefore they aren't going to be able to bid on jobs.

That's probably as strong a compliance lever as you'll be able to find.

Mr. SYNAR. I understand that. I want to get back to this accreditation system. Now the person who attends the class presents himself to the world as an EPA-certified, accredited person. Correct?

Dr. MOORE. I would assume he had presented himself that he attended a course that was approved by, accredited by EPA.

Mr. SYNAR. If he passes the course, he's accredited by EPA, right? OK. Now suppose an EPA auditor sits in on one of those approved classes and discovers that there's a very serious problem with the instruction. Participants in that class will still be accredited, won't they?

Dr. MOORE. Yes.

Mr. SYNAR. So it doesn't matter, even if you find the problem, they're still going to be accredited, aren't they?

Ms. VOGT. Yes. That is absolutely true.

Mr. SYNAR. Have you all ever disapproved a program after sitting through it?

Ms. VOGT. Yes, we have.

Mr. SYNAR. You have?

Ms. VOGT. We have disapproved four courses that have come before us and not given them approval.

Mr. Synar. After they'd been approved.

Ms. Vogt. No.

Mr. Synar. After the fact. After the audit?

Ms. Vogt. After the audit. That's correct.

Mr. Synar. But the people who were in that class all got approved, didn't they? So they're out in the world.

Ms. Vogt. That is an unfortunate fact, yes.

Mr. Synar. An unfortunate fact. OK. Now we understand from talking to an EPA regional staff member that frequently when there's a problem with a class, the EPA reviewer will bring it to the instructor's attention at the time so he can correct it right away. But you don't have people sitting in every class, do you?

Ms. Vogt. No, we don't have enough staff to do that.

Mr. Synar. Do people taking the courses have to pass a standardized exam like a bar exam to become accredited?

Ms. Vogt. They have to take an exam. And we have set criteria for what that exam should contain.

Mr. Synar. Who writes the exams?

Ms. Vogt. The course provider writes the exams and we look at the questions.

Mr. Synar. But we don't know since we don't have somebody in there whether that course examiner is doing the right exam, do we?

Ms. Vogt. Not if we don't have somebody in there. No.

Mr. Synar. So, has EPA ever decertified somebody who's been accredited?

Ms. Vogt. We have not decertified a fully-accredited course. No. Or, do you mean a contractor? No.

Mr. Synar. A contractor.

Ms. Vogt. But——

Mr. Synar. Do you have a procedure to do that?

Ms. Vogt. Yes, we do. And if we found that that contractor were violating a NESHAP standards or some other EPA regulation. In fact, part of our coordination with NESHAP's program is in fact to work with contractors who have been certified under our program and to go after very strongly those that do not perform according to the NESHAP's requirements. And those contractors will lose their certification.

Mr. Synar. What is that procedure? Explain that.

Ms. Vogt. Which procedure is that?

Mr. Synar. Tell us that procedure of discrediting. Not discrediting. Decertifying a person.

Ms. Vogt. Why don't you talk about the NESHAP's.

Mr. Synar. EPA accredited.

Ms. Vogt. The NESHAP's enforcement strategy. No, you're not talking about that.

Mr. Synar. No, no. Let me ask staff.

Ms. Seddon. What we're trying to find out is a case where a person has been accredited by EPA—is an EPA—accredited management planner or contractor. They've gone through the course. It was an EPA-approved course. If there's a problem with that person, what is the procedure that EPA has for decertifying that person? This is not State procedures that are just now getting into place, but EPA.

Ms. VOGT. Let me put it into practical terms and see if this is what you're talking about. Let's take an inspector. And let's say, an inspector has been accredited by EPA. But when we get around to looking at that inspection report, we find out the inspector has not fully inspected the school. Say, has not inspected the nonfriable material. That's just a case example.

That you'd be talking about the procedure. The enforcement people who would find that violation would bring it to our people's attention. I cannot speak to specific procedures but I'm sure they would be in place to try to take away that person's certification.

Mr. SYNAR. What are they?

Ms. VOGT. I do not know. I don't know if we have worked those out.

Mr. SYNAR. Does anybody in this room know? We've got a lot of people here. Does anybody know?

Ms. VOGT. I think we will work through some of these real life situations, Congressman, when we get toward the point in time when we have a deadline and some of these situations will occur. But we will not continue to certify people.

Mr. SYNAR. Do you understand, Ms. Vogt, these people are writing plans that are due October 12. We're talking about 5 months from now. We've got deadlines here.

Ms. VOGT. You're absolutely right. And I think what one of the previous witnesses brought up is pertinent here. And that is, we believe that it is a collaboration of all the people who work in the school district and work with that inspector to make sure that they know what the requirements are for the inspection. They know what the requirements are for the management plan. It is in fact the school district's responsibility to develop a management plan and do a complete inspection. And they have to hire people who are certified by us.

Mr. SYNAR. But you just told—gosh darn—this is a dog chasing its tail here. They have to hire people who are accredited by you. You don't know if they're really accredited. We're going around in a circle here. I mean you've passed the buck with absolutely nothing. I mean, you're telling these people they have to go out and hire accredited people. Right?

Ms. VOGT. That's correct.

Mr. SYNAR. And we just walked through a series of questions that gives me absolutely no confidence that the accreditation system for these people works. That the people who are being hired by the school boards, that are developing the management plans, that have to be reviewed by the States. I mean, you're not going to sit there and make the argument that with all we've been through here for the last hour that you have any confidence in this process do you?

Ms. VOGT. Well, Congressman. I have more confidence in the degree of review that we've given these courses and the auditing and the involvement of our regional offices in these courses and the fact that people are spending 5 days in the courses and taking an exam than I would if that system were not in place. That I have more confidence in the consistency of the inspection and the management plan.

Mr. SYNAR. I could go out today and I have absolutely no idea how to do this thing. I could go out, set up a school. Today. I could put up my own exam. You don't even know what's on my exam since you don't have people. I mean, I could set up an exam that you would not necessarily approve, since you're not in there auditing. I may even make mistakes. And then I have certified this whole room of people here. And they're out in the world talking to all of those school districts. And now we're coming into October 12 with these management plans. And then, when the management plans hit the desk, States don't have the resources to give it the quality check, because they don't have the personnel. They don't have the money. We just went through a spot check of 30 minutes. Then we got an accreditation process which, you know, is basically putting those plans together. So we're going back through another cycle.

We're 4 months away from the management plans. These management plans are the blueprint, the literal blueprint for the country, and as Mr. Kitchen has pointed out earlier, they aren't going back in a year and redoing these. It's a one time shot. They're going to do it. And if you tell them that it's wrong, that's fine. They're not going to do it again. So, really, where are we in this thing?

Ms. VOGT. Well, I think what you're seeing is an effort that we're all going through together to meet strict deadlines and accomplish a very great task. And we are all trying to do this together. We at EPA, the regions, and the people in the schools and the people in the States. I will point out, Mr. Kitchen probably knows, that AHERA itself and our rules, require a reinspection every 3 years. AHERA requires an amendment to those management plans as the conditions change in the schools. And that reinspection must be done by accredited inspectors.

Mr. SYNAR. Let me ask you.

Ms. VOGT. So it is not a one time only task.

Mr. SYNAR. Can I get a commitment out of you? Let's finish this segment and say, can I get a commitment out of you that you're going to go back and look at this accreditation system?

Ms. VOGT. Yes, I will.

Mr. SYNAR. What are you going to do?

Ms. VOGT. Well, I'm going to first of all ask for procedures for taking accreditation away from people who are found to have violated their responsibilities.

Mr. SYNAR. A start. That's a start.

All right. Mr. Emison. Last year, you told us that one of the objectives of EPA's policy for assessing civil penalties for violation of NESHAP was to make sure that violators don't derive any economic benefit from their illegal activities, or actions. I'd ask unanimous consent that EPA's civil penalty policy be included into the record.

[The information follows:]

APPENDIX III

Asbestos Demolition and Renovation Civil Penalty Policy

The Clean Air Act Stationary Source Civil Penalty Policy provides guidance for determining the amount of civil penalties EPA will seek in pre-trial settlement of enforcement actions under Title I of the Act. Due to certain unique aspects of asbestos demolition and renovation cases, separate guidance is provided here for determining the gravity and economic benefit components of the penalty. Adjustment factors should be treated in accordance with the general stationary source penalty policy.

If the Region is referring a civil action under Section 113(b) against a demolition or renovation source, it should recommend a civil penalty settlement amount. Consistent with the general penalty policy, the Region should determine a "preliminary deterrence amount" by assessing an economic benefit component and a gravity component. This amount may then be adjusted upward or downward by consideration of other factors, such as degree of willfulness and/or negligence, history of noncompliance, ability to pay, and litigation practicalities. Since there is a wide variation in the size of demolition contractors, ability to pay may be an important adjustment factor in some instances.

The "gravity" component should account for factors such as the environmental harm resulting from the violation, the importance of the requirement to the regulatory scheme, and the size of the violator. Since asbestos is a hazardous air pollutant, the gravity factor associated with substantive violations (i.e., failure to adhere to work practices or to prevent visible emissions from waste disposal) should be high. Also, since notification is essential to Agency enforcement, a notification violation should also warrant a high gravity component.

Gravity Component

The attached chart sets forth the gravity component of the penalty settlement figure for notification violations and for violations of substantive requirements for control of asbestos emissions. The figures in the first line of the chart apply as a general rule to failure to notify, including those situations in which substantive violations occurred and those instances in which EPA has been unable to determine if substantive violations occurred. The reduced amounts in the second line of the chart apply only if the Agency can conclude, from its own inspection, a State inspection, or other reliable information, that the source complied with substantive requirements.

Where notification is made late, the Region has discretion to seek a lesser penalty. The penalty should reflect the degree to which the Region's ability to evaluate substantive compliance has been hampered. If notification is late but still allows sufficient opportunity to monitor the entire project, little or no penalty is warranted. If notification is given so late as to preclude any evaluation of substantive compliance, the Region should determine a penalty as if no notice were given.

Regions should exercise discretion in penalizing a timely notification which is incomplete. A notification can be so insufficient as to be tantamount to no notice, in which case the Region should determine the penalty as if there were no notice. Again, the important factor is the impact the company's action has on our ability to monitor substantive compliance.

Penalties for substantive violations are based on the particular regulatory requirements violated. The figure is the sum of the penalty assigned to a violation of each set of requirements: removal, wetting, and stripping, 40 C.F.R. §61.147; collection, packaging, and transporting of asbestos-containing waste material, §61.152(b); and disposal of wastes at an acceptable site, §61.152(a). The figure also depends on the amount of asbestos involved in the operation, which relates to the potential for environmental harm associated with improper removal and disposal. There are three categories based on the amount of asbestos, expressed in "units," a unit being the threshold for applicability of the substantive requirements. If a job involves friable asbestos on pipes and other facility components, the amounts of linear feet and square feet should each be separately converted to units, and the numbers of units should be added together to arrive at a total. Where the only information on the amount of asbestos involved in a particular demolition or renovation is in cubic dimensions (volume), the amount can be converted to square dimensions by dividing the volume by the estimated thickness of the asbestos material.

Gravity components are adjusted based on whether the violation is a first, second, or subsequent offense. By "second" or "subsequent" offense, we mean that the company has violated the regulations after previously being notified by the State or EPA of asbestos NESHAP violations. This prior notification could range from simply a warning letter to the filing of a judicial enforcement action. A "second" violation could even occur at the same job as the first one if, after being notified of violations by the State or EPA and having an opportunity to correct such violations, the company continues to violate the regulations. If the case involves multiple potential defendants and any one of them is involved in a second or subsequent offense, the penalty should be derived based on the second or subsequent offense. In such instance, the Government should try to get the prior-offending party to pay the extra penalties attributable to this factor. (See discussion below on apportionment of the penalty.)

The Region should consider enhancing the gravity component in situations where the duration of the violation increases the potential harm. This would be particularly appropriate where the source allows asbestos waste material to stay on site without any effort to collect and dispose it for a significant period of time.

Benefit Component

This component is a measure of the economic benefit accruing to the contractor, the facility owner, or both, as a result of noncompliance with the asbestos regulations. Information on actual economic benefit should be used if available. The attached chart provides figures which may be used as a "rule of thumb" to determine the costs of removing and disposing asbestos in compliance with §61.147 and §61.152, where actual information is difficult to obtain or is suspect. The figures are based on rough cost estimates which the Office of Air Quality Planning and Standards has developed in considering revisions to the asbestos standard. These estimates are within a range of numbers that OAQPS has considered in determining the economic impact of the asbestos demolition and renovation requirements. Also, if any party ultimately pays to have all or part of the job done in compliance, actual expenditures can be used to offset the benefit of noncompliance.

Apportionment of the Penalty

This policy is intended to yield a minimum settlement penalty figure for the case as a whole. In some cases, more than one contractor and/or the facility owner will be named as defendants. In such instances, the Government should generally take the position of seeking a sum for the case as a whole, which the multiple defendants can allocate among themselves as they wish.

It is not necessary in applying this penalty policy to allocate the economic benefit between the parties precisely. The total benefit accruing to the parties should be used for this component. Depending on the circumstances, the economic benefit may actually split among the parties in any combination. For example, if the contractor charges for compliance with asbestos removal requirements and fails to comply, the contractor has derived a savings and the owner has not. If the contractor underbids because it does not factor in compliance with asbestos requirements, the facility owner has realized the full amount of the financial savings. (In such an instance, the contractor may have also received a benefit which is harder to quantify - obtaining the contract by virtue of the low bid.)

There are circumstances in which the Government may try to influence apportionment of the penalty. For example, if one party is a second offender, the Government may try to assure that such party pay the portion of the penalty attributable to the second offense. If one party is known to have realized all or most of the economic benefit, that party may be asked to pay for that amount. Other circumstances may arise in which one party appears more culpable than others. We realize, however, that it may be impractical to dictate allocation of the penalties in negotiating a settlement with multiple defendants. The Government should therefore adopt a single "bottom line" sum for the case and should not reject a settlement which meets the bottom line because of the way the amount is apportioned.

Apportionment of the penalty in a multi-defendant case may be required if one party is willing to settle and others are not. In such circumstances, the Government should take the position that if certain portions of the penalty are attributable to such party (such as economic benefit or second offense), that party should pay those amounts and a reasonable portion of the amounts not directly assigned to any single party. However, the Government should also be flexible enough to mitigate the penalty somewhat to account for the party's relative cooperativeness. If a case is settled as to one defendant, a penalty not less than the balance of the settlement figure for the case as a whole should be sought from the remaining defendants. This remainder can be adjusted upward, in accordance with the general Civil Penalty Policy, if the circumstances warrant it. Of course, the case can also be litigated against the remaining defendants for the maximum attainable penalty.

Other Considerations

We expect that each Region may want to develop its own strategy (some have already done so) for targeting enforcement action against violators of the asbestos demolition and renovation requirements. The policy is intended to give

Regions flexibility to incorporate, as part of a coherent strategy, a practice of addressing first-time notice violations where there is at least probable compliance with substantive requirements through findings of violation or administrative orders. There is also the potential for "pre-settling" judicial actions for modest penalties for such violations.

On the other hand, the policy penalizes substantive violations and repeat violations in a significant way. Penalties should generally be sought for all violations which fit these categories. If a company knowingly violates the regulations, particularly if the violations are severe or the company has a prior history of violations, the Region should consider initiating a criminal enforcement action.

Examples

Following are two examples of application of this policy.

Example 1

XYZ Associates hires America's Best Demolition Contractors to demolish a building containing 1300 linear feet of pipe covered with friable asbestos, and 16,000 square feet of siding and roofing sprayed with asbestos. Neither company notifies EPA or State officials prior to commencing demolition of the building. Tipped off by a citizen complaint, EPA inspects the site and finds that the contractor has not been wetting the asbestos removed from the building, in violation of 40 C.F.R. §61.147. In addition, the contractor has left a pile of dry asbestos waste material on site, and the inspector observes visible emissions in violation of §61.152(b). The contractor has also not deposited the waste in an acceptable disposal site, in violation of §61.152(a). At the time of the inspection 75% of the asbestos has already been removed from the building and handled improperly. After discussion with EPA officials, XYZ Associates hires another contractor to properly dispose of the asbestos wastes and to remove the remaining 25% of the asbestos in compliance with the asbestos NESHAP.

Neither XYZ Associates nor America's Best Demolition Contractors has ever been cited for asbestos violations by EPA or the State. Both parties have sufficient resources to pay a substantial penalty.

The penalty is computed as follows:

Gravity Component	
No notice (first time)	$10,000
Violations of §61.147, §61.152(b), and §61.152(a) (100 + 5 = 105 units of asbestos	+45,000
	$55,000
Economic Benefit	
$4/sq. foot x 16,000 sq. feet + $4/ linear foot x 1300 linear feet	$69,200
Offset by actual expenditure by XYZ to remove 25% of asbestos in compliance with NESHAP (25% x $69,200)	-17,300
	$51,900
Preliminary deterrence amount	$106,900
Adjustment factors - Prompt correction of environmental problem (-30% of gravity component)	$-16,500
Minimum penalty settlement amount	$ 90,400

Example 2

Consolidated Conglomerates, Inc., hires Bert and Ernie's Trucking Company to demolish a building which contains 10,000 linear feet of friable asbestos on pipes. Neither party gives notice to EPA or to the State prior to commencement of demolition. An EPA inspector, acting on a tip, visits the site after the building has been totally demolished. He finds a large pile of dry asbestos-containing waste material on site. The inspector learns that the demolition had been completed at least three weeks before he inspected the site.

Consolidated Conglomerates is a corporation with assets of over $100 million and annual sales in excess of $10 million. Bert and Ernie's Trucking is a limited partnership of two brothers who own two trucks and have less than $250,000 worth of business each year. This contract was for $50,000. Bert and Ernie's was once previously cited by the State Department of Environmental Quality for violations of asbestos regulations.

The penalty is computed as follows:

Gravity Component	
No notice (2nd violation)	$25,000
Violations of §61.152(b) and §61.152(a) (2nd violation); no direct evidence of violation of §61.147 (app. 38.5 units)	$40,000
Aggravation of hazard due to duration of disposal violation - + 25% of substantive violations (25% x $40,000)	$10,000
	$75,000
Benefit Component	
$4/linear foot x 10,000 linear feet	$40,000
Preliminary deterrence amount	$115,000
No adjustment factors	
Minimum settlement penalty amount	$115,000

Apportionment of the Penalty

The penalty in this case has been increased by $35,000 because it involves a second violation by the contractor. Ordinarily, the Government should try to get Bert and Ernie's to pay at least that amount of the penalty. However, Consolidated Conglomerate's financial size compared to the contractor's will probably dictate that Consolidated pay most of the penalty.

Asbestos Demolition/Renovation Penalty Policy

Gravity Component

Notification	1st Violation	2nd Violation	Subsequent
No notice	$10-12,000	$20-25,000	$25,000
No notice but probable substantive compliance	$0-5,000	$10-15,000	$25,000

Late notice - discretion - if tantamount to no notice, use above table

Incomplete notice - discretion - if tantamount to no notice, use above table

Substantive Violations

Total amount of asbestos involved in the operation	1st Violation	2nd Violation	Subsequent
≤ 10 units	$5,000	$15,000	$25,000
> 10 units but ≤ 50 units	$10,000	$20,000	$30,000
> 50 units	$15,000	$25,000	$35,000

unit = 260 linear feet or 160 square feet - if both are involved, convert each amount to units and add together

Apply matrix separately to violation of §61.147, §61.152(b), and §61.152(a) - add together

Enhance if duration of offense aggravates hazard - e.g., failure to dispose of asbestos - containing wastes.

Benefit Component

For asbestos on pipes:

$3 per linear foot of asbestos for wetting of friable asbestos and packaging of wastes - §61.147, §61.152(b)
$1 per linear foot of asbestos for transporting and disposal of wastes - §61.152(b), §61.152(a)

$4 per linear foot for both

For asbestos on other facility components:

$3.50 per square foot for wetting of friable asbestos and packaging of wastes
$ .50 per square foot for transporting and disposal of wastes
$4.00 per square foot for both

Mr. SYNAR. Now this policy finds that the economic benefit may accrue to an abatement contractor which charges a facility owner for compliance with asbestos removal requirements and then fails to comply. If a contractor underbids, because they do not intend to comply with the requirements, the facility owner realizes the financial savings, obviously, because they don't have to put the money out. Thus, there could be really a double incentive, disincentive, to comply. Couldn't there?

Mr. EMISON. From the——

Mr. SYNAR. From both parties. Couldn't there. A double incentive. A double disincentive to comply. Correct? How do you calculate the economic benefit of noncompliance?

Mr. EMISON. Let me ask Mike Alushin to answer that from our compliance team.

Mr. SYNAR. How do you do that?

Mr. ALUSHIN. We have a policy chart which is at the back of the policy that you distributed. The very last page there. And what we work with is the linear feet of asbestos if you're removing from pipes, or square feet if you're removing from other architectural units. Numbers here represent our technical people's estimate of the actual contractor's cost. Unrelated to the bid, but the cost of removing that kind of material. It's an engineering estimate.

Mr. SYNAR. So it's based upon the amount of asbestos involved.

Mr. ALUSHIN. That's right, sir. If you look at the bottom it says benefit component. It's per foot.

Mr. SYNAR. Now I understand that the cost of removing asbestos from a building varies substantially depending on a variety of factors such as, who's in the building, the renovation, how difficult it is to get to it, et cetera. In a report about 18 months ago, a consultant quoted a price of $22 per linear foot to remove asbestos from pipes in buildings here on Capitol Hill. What noncompliance cost per linear foot does your policy use for asbestos on pipes?

Mr. ALUSHIN. The total is $4 at this point.

Mr. SYNAR. So that's $3 for improper removal and another $1 for improper disposal.

Mr. ALUSHIN. Yes, sir.

Mr. SYNAR. So that would be $4. Now what is the relationship between the dollar amounts calculated based upon your penalty policy and the cost of properly removing the asbestos, or the actual economic benefit gained?

Mr. ALUSHIN. The engineers who gave us the input for this policy told us these were good estimates of proper removal.

Mr. SYNAR. When did you get those?

Mr. ALUSHIN. This policy was last amended in 1985.

Mr. SYNAR. Have costs gone up since 1985?

Mr. ALUSHIN. I personally don't know. Although given the way my life and my checkbook works, I bet they did.

Mr. **Synar**. All right. Now EPA provided the subcommittee with documentation of all relevant calculations leading to decisions regarding the settlement of cases over the past few years, Mr. Emison. I'd like to go over one or two of these cases to discuss how you all arrived at the penalties and to learn how you calculate economic benefit each company may have learned. I'd ask unanimous consent that data on the calculation of penalties in these cases be put into the record at this point.

[The information follows:]

CASE # 1

ASBESTOS PENALTY

GRAVITY COMPONENT

§ 61.146	0 violations	0		

Substantive Violations (7 units)

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§ 61.147	1 violation(s)	$5,000		
§ 61.152(a)	0 violtion(s)	0		
§ 61.152(b)	0 violation(s)	0		
§ 61.156	0 violation(s)			
Aggravation of hazard due to duration of violation: 0% of substantive violations. (30% max)		$5,000	$5,000	
			0	
			$5,000	$5,000

ECONOMIC BENEFIT COMPONENT

# Square feet:	142 $/sf $3.50	$ 497		
# Linear feet:	1559 $lf: $3.00	4,677		
		$5,174	$5,174	
Offset by actual expenditure by company to remove 0% of asbestos in compliance with NESHAPS. % of benefit component: 0%			0	
			$5,174	$5,174

PRELIMINARY DETERRENCE AMOUNT			$10,174	$10,174

Adjustment factor - prompt correction of environmental problem: 0% of gravity component				0

MINIMUM PENALTY SETTLEMENT AMOUNT				$10,174

Proposed Penalty

The consent decree enjoins Defendants to comply with all asbestos NESHAPS regulations in the future and requires them to pay a civil penalty of $10,000. This amount is extremely favorable to EPA.

The Region's agressively-calculated preliminary deterrence amount was $10,174. Of that total, $5,174 was the economic benefit component calculated on the basis of improper removal of all the asbestos present, not just the 76 linear feet that was in fact removed improperly. Additionally, the $5,000 gravity component reflected no reductions for the first-time violators' cooperativeness and prompt correction of the problem.

VII. PENALTIES

A. Proposed civil penalty and legal authority.

In calculating a penalty for settlement purposes, Region III used the Revised Asbestos Demolition and Renovation Civil Penalty Policy, February 8, 1985.

B. Penalty analysis/calculation

1. Bottom line and open negotiation figures

In determining a civil penalty amount pursuant to the asbestos NESHAP penalty policy, two components are addressed, a gravity component and a benefit component.

The gravity component includes factors such as the environmental harm resulting from the violation, the importance of the requirement(s) to the regulatory scheme and the size of the violator. Since asbestos is a hazardous air pollutant, the gravity component associated with substantive violations (e.g., failure to wet asbestos) should be high. Additionally, because the notificaton requirement is important if an effective enforcement program is to be carried out, a violation of this requirement also warrants a high gravity component.

The economic benefit is a measure of what the owner or contractor gains by failing to comply with the regulations. This can be realized by not providing the notice to EPA and the appropriate state or local agency, by not wetting, tagging and handling the asbestos materials properly, and by not transporting and disposing of the asbestos as prescribed by the regulations but rather by treating it as ordinary construction rubble.

Gravity Component

a. Notice Violations

Failure to submit notice (first offense)	$12,000

b. Substantive Violations

§ 61.47 -	failure to wet asbestos during removal.	$5,000
§ 61.152(a) -	failure to dispose of asbestos at waste disposal site operated in accordance with the provisions of § 61.156.	$5,000
§ 61.152(b) -	discharge of visible emissions or failure to use one of the disposal methods specified in the regulations.	$5,000

($5,000 per violation, because less than 10 units (260 linear feet or 160 square feet = 1 unit) of asbestos is involved and this is the first violation for defendants)

Economic Benefit Component

The only economic benefit in this case would have accrued to Based on the estimate by that there was 500 linear feet of asbestos at the site, the benefit component would be $2,000. This amount should be considered in determining an appropriate settlement amount with this defendant. There would have been no economic benefit to contracted with to demolish the site for $8,475. However, ultimately paid $12,600 for proper disposal of the asbestos, substantially more than the $2,000 benefit calculation under the penalty policy.

Adjustment factors

Once the Cease and Desist Order was issued, the demolition operation ceased and was promptly hired to properly dispose of the asbestos. Therefore, we are applying a 10% reduction in the gravity component. The gravity component figure will therefore be reduced by $2,700.

Minimum Penalty Settlement Amount

Adjusted Gravity Component ($27,000 - $2,700)	$24,300
Economic Benefit	-
Total Minimum Settlement Amount	$24,300

C. Statutory Maximum Penalty Amount

The maximum penalty amount, as provided for by Section 113(b) of the Act, 42 U.S.C. § 7413(b), is $25,000 per day per violation.

D. Present Financial Condition of Defendants

1. ____________________

has provided financial information to indicating that he is in poor financial condition. EPA has requested copies of this information.

2. ____________________

According to a June 17, 1986, Dun & Bradstreet Report, is in good financial condition. (Attachment 2).

3. ____________________

According to a June 6, 1986, Dun & Bradstreet report, is in good financial condition. (Attachment 1).

Mr. **Synar**. Let's consider case No. 1, which is before you, which involved the failure to keep the asbestos wet while it was being removed and while it was bagged and awaiting disposal. Now there is nothing here to indicate that the actual economic benefit to the building owner or the contractor, was considered. Is that correct?

Mr. **Alushin**. Yes. These are rule of thumb numbers. They do not go into the actual.

Mr. **Synar**. Was the actual economic benefit anywhere near $5,174 you calculated following the policy?

Mr. **Alushin**. We don't know what the actual benefit was.

Mr. **Synar**. So you don't.

Mr. **Alushin**. We rule, we go by the rule of thumb.

Mr. **Synar**. Doesn't the policy require that you get that information?

Mr. **Alushin**. It does not. It goes by the rule of thumb numbers.

Mr. **Synar**. The way to compute actual economic benefit, you have to get the data from the companies on the financial ability of the company to pay, don't you?

Mr. **Alushin**. No. Let me just briefly explain. We can use the real economic benefit if we have them. Generally, we don't. We use the rule of thumb numbers. And the economic condition of the company may be presented by the company to us as an effort to mitigate the penalty, if they're in deep financial straits.

Mr. **Synar**. All right. Now let's go to case two. That may help us here. This is one that involved multiple violations: a failure to notify EPA; a failure to wet the asbestos during and after removal; and improper disposal. Which pretty well comes to a real mess. Now what did the analysis of this case show was the economic benefit to the building owner and to the contractor?

Mr. **Alushin**. In this case, I believe on the page that is numbered 18, it says that it was about $2,000. If you look on the middle of that page, there's a reference to economic benefit component, and the fourth line down, based on the estimate that the linear feet again, this is rule of thumb estimate.

Mr. **Synar**. Hang on for a second. That was the actual benefit, that $2,000, you're saying?

Mr. **Alushin**. Again, sir, that's the rule of thumb estimate.

Mr. **Synar**. Rule of thumb? You didn't go out and find that one.

Mr. **Alushin**. We measured the linear feet and multiply by the number in the table, which is based on a generalized engineering estimate of the cost.

Mr. **Synar**. I think the point that we're trying to make and it's hard to make when you keep throwing the rule of thumb up is the fact that when you have a $3 cost, when you use that, and if you're not looking at the financial benefits that a company is getting, you really don't know what the economic impact is to a company, do you?

Mr. **Alushin**. No, it's hard to know what the exact economic impact is.

Mr. **Synar**. You don't know it at all. Not exact. You don't know any of it. You're not even doing the things necessary to figure that out, are you?

Mr. **Alushin**. Except working with the rule of thumb that was provided by the engineers.

Mr. SYNAR. The rule of thumb is $3 per square, linear foot, right?

Mr. ALUSHIN. But, if I may offer a thought. This policy does have two parts. If you go back to the table, how the penalties are assessed. There's also something called a gravity component?

Mr. SYNAR. Yes.

Mr. ALUSHIN. And that was in fact added in the 1985 revisions because we were worried that the penalties were too small. And so, you now add this gravity component on and if you look at the case calculations which we distributed for that.

Mr. SYNAR. That doesn't tell you what these companies are making, does it?

Mr. ALUSHIN. No. But what I'm saying is that we add on a penalty above and beyond the economic benefit to try to get——

Mr. SYNAR. But the penalties really bear no relationship to the economic gain, do they, without knowing that, do you?

Mr. ALUSHIN. They bear the relationship established by the rule of thumb. That's all we know.

Mr. SYNAR. Don't give me that. They don't have any bearing on the economic gain do they? Don't use the rule of thumb, don't even say that.

Mr. ALUSHIN. I mean they don't. I won't. Really. I got that message.

Mr. SYNAR. All right. Just a second. AHERA requires the EPA, quote, to promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment, unquote. Now, Dr. Moore, according to your testimony today, you plan to issue the transportation disposal rule as part of the NESHAP provision and the rule is to be proposed in early 1989. Without a rule, what requirements currently apply to the transportation and disposal of asbestos wastes from schools?

Dr. MOORE. The current NESHAP's.

Mr. SYNAR. The current things. That's section 204?

Mr. EMISON. Section 112.

Mr. SYNAR. Section 112 of Clean Air?

Mr. EMISON. Yes, sir.

Mr. SYNAR. OK. Now section 204 of AHERA provides that if EPA did not issue the rule, that the most recent version of EPA's Waste Management Guide would apply. Is that correct?

Dr. MOORE. Correct.

Mr. SYNAR. Now in January and February of this year, EPA considered proposing a separate rule for transporation and disposal under AHERA. I'd ask unanimous consent that the document prepared during discussions about issuing such a rule be included into the record.

[The information follows:]

AHERA Transport and Disposal Rule

Talking Points for Steering Committee Discussion

* Why is this rule needed?

The rulemaking activity is required under the Asbestos Hazard Emergency Response Act of 1986 (AHERA), signed by President Reagan on October 22, 1987. Section 203(h) of AHERA requires the Administrator to "promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment. Such regulations shall include such related to the manner in which transportation vehicles are loaded and unloadedas will assure the physical integrity of containers of asbestos-containing waste material".

* How does this rule relate to other sections of AHERA?

Other regulations prescribed by AHERA were issued as a final rule on October 17, 1987. The original intention was to utilize portions of the revised asbestos NESHAP (40 CFR 61, Subpart M) which pertained to transport and disposal for compliance with AHERA requirements. The revised asbestos NESHAP was to have been proposed during June, 1987, but was postponed after undergoing Red Border review and receiving OMB clearance. Consequently, OPTS was forced to issue the final rule without a Transport and Disposal section.

* Why is the rule being proposed now?

Since the regulations required by AHERA were not issued by October 17,1987, Section 204 of the AHERA requires Local Educational Agencies (LEA's) to "provide for the transportion and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's 'Asbestos Waste Management Guidance' (or any sucessor to such document)".

The Transport and Disposal Rule is being proposed at this time because the Waste management document, whose use has become mandatory, is a guidance document never intended to provide mandatory direction. Its language consists of two brief references to portions of the existing NESHAP which are already mandatory, and many recommendations for courses of action which are not mandatory.

OGC informs us that the requirement under the "hammer" provision of AHERA to use the guidance does not make any formerly non-mandatory portions mandatory. The extent to which the document's guidance must be followed is therefore ambiguous. The extent to which use of the document can be enforced, and what portions of the document can be enforced, are equally ambiguous.

* How does the language of this proposed rule relate to the language of the NESHAP revision?

The regulatory language of this proposed rule is condensed from language of the NESHAP revision that pertains to Schools and covers recordkeeping, loading of vehicles, and disposal of asbestos waste. The rule language was provided by OAQPS and is closely based on the version which has completed Red Border review. Transportation per se is not covered, because it is already regulated by the Department of Transportation in 49 CFR 171 and 172.

* Why is the rule classified as minor?

This rule is classified as minor because of its very small economic impact. Preliminary data provide by OAQPS, which will be expanded upon by ETD, indicates that the major impact, due to recordkeeping requirements, will not exceed $100,000 per year.

Mr. **Synar**. Now it describes the reason a rule is needed and let me quote from that. "The extent to which the documents" and they're talking about waste management here, "guidance must be followed is . . . ambiguous. The extent to which use of the document can be enforced and what portions of the document can be enforced, are equally ambiguous." So the rule will help remove this ambiguity. Right? Is that correct?

Ms. **Vogt**. Yes, it's correct.

Mr. **Synar**. Now, let's go back to NESHAP's requirement. Now do I understand correctly that although EPA and the delegated States are uncovering increasingly high numbers of violations, that the judicial actions for NESHAP violations have not increased? In fact, the number of NESHAP referrals have actually remained relatively stagnant, have they not, Mr. Emison?

Mr. **Emison**. Relatively so. But they flop around.

Mr. **Synar**. I'd like to read from a March 10, 1988, note prepared for the Office of Air Quality, Planning, and Standards, which summarizes the need for revised NESHAP regulations. Now among the reasons are, and I'm going to quote this for you. ". . . The current NESHAP has a quantity cutoff for control materials involved in a demolition or renovation activity. The Regional enforcement personnel strongly believe that the greatest constraint on effective enforcement involves having to prove to the court that an amount of asbestos greater than the cutoff was involved in the activity. (Unless removal is actually observed, it is easy for an owner to claim that the amount of asbestos was below the cutoff)." So now, eliminating a cutoff, Mr. Emison, in the NESHAP rule, could make it easier for enforcement cases to be brought. Could it not?

Mr. **Emison**. Yes, sir, that's right.

Mr. **Synar**. Now the inspector general, this morning, testified that his audit showed that States and EPA frequently do not receive notices about asbestos demolition and renovation projects in time to make an inspection. He also said that NESHAP's regulations only require notification "as soon as possible" prior to the actual removal operations. And then the inspector general recommended an amendment to the NESHAP to require contractors to submit a notification by a certain date. So this change would help improve enforcements, would it not?

Mr. **Emison**. Yes, sir.

Mr. **Synar**. Obviously, there is a lot this rule could do to help out the enforcement efforts. Both in the new school rule and requirements of NESHAP for asbestos. I'd ask unanimous consent that an agency project milestone report for the review of asbestos NESHAP be included into the record.

[The information follows:]

PROJECT
MILESTONE REPORT
Phase 3

Review of Asbestos NESHAP
NESHAP and Title

SAR 1714

Pollutant(s) Asbestos

Date of Report: 05/01/88

Project Start Date: 9/80

Branch Chief Initial:

Lead Engineer: S. Roy X5578 ext. B. Moore X5460 ext.

Contractor: RTI / M. Laney Firm/Project Leader

	Original Planned Date	Current Planned Date					Actual Date
PHASE 3 ACTIVITY	5/15/86	9/29/87	5/1/88				
1. WG pkg. to ESD/OD	7/8/86						7/8/86
2. SC pkg. to ESD/OD	9/9/86						9/10/86
3. Pkg. signed by AA	10/23/86						11/7/86
4. SC closure memo	10/30/86						12/23/86
5. AA pkg. to ESD/OD	12/18/87	3/9/87	8/26/88				3/9/87
6. Pkg. signed by OAR	2/2/87	5/8/87	9/30/88				5/8/87
7. AA sign-off complete	2/2/87	5/12/87	10/13/88				5/12/87
8. Pkg. to OMB	2/23/87	6/29/87	10/27/88				6/29/87
9. OMB approval	3/4/87		11/25/88				
10. Proposal, FR	4/8/87		1/6/89				
11. Public comments	7/8/87		4/7/89				
12. WG pkg. to ESD/OD	9/30/87		6/30/89				
13. SC pkg. to ESD/OD	12/2/87		9/1/89				
14. AA pkg. to ESD/OD	3/17/88		12/8/89				
15. OMB approval	5/23/88		3/9/90				
16. Promulgation, FR	6/27/88		4/6/90				

Mr. SYNAR. And assuming that the Agency stays on schedule, the earliest the long-awaited NESHAP rule could be promulgated is April 1990, almost 2 years from now. And this is almost a decade from when this revision project started. And that assumes, of course, that it doesn't get hung up somewhere along the road, Mr. Emison, somewhere like OMB, or that you don't fall behind schedule. So I guess the question I have is, the proposed NESHAP's rule has already been through the Agency's own red border review. Has it not?

Mr. EMISON. Yes, sir, but go ahead.

Mr. SYNAR. Can I get your commitment, to try to see if there isn't some way to speed that process up so that a revised useful rule can be out and so that we can get it effective before the demolition and abatement projects are completed?

Mr. EMISON. The asbestos NESHAP was either on the Administrator's desk or about to be put before him for proposal back last summer. And the Board of Appeals for the District of Columbia rendered their so-called vinyl chloride decision which told EPA that we have to develop NESHAP's in an entirely different manner than we had before. That caused us to have to go back and first figure out exactly how to carry out the court's mandate.

And second, then to move the NESHAP that we had the court order on, which in this case they ordered us to move ahead on the benzene case. The benzene NESHAP. To move that out. We worked through that with the Administrator in terms of exactly how to consider the information according to this two-step approach which the court told us and our schedule by Friday for the Administrator to propose a benzene NESHAP. Asbestos. Once we had established the procedures that we wanted to use. What kind of analysis we wanted to do to be able to first, as the court said, take a look at what is a health situation and then go to an acceptable margin of safety. Once we had established that, we then moved as fast as we could on the asbestos rule. To get it developed. The schedule that you have here, which is out of our Jim's report, reflects about as tight a squeezing as I can possibly do to get this thing out, knowing that we've got to go back and essentially redecide the NESHAP again.

Mr. SYNAR. You're telling me that the best you can do is 2 years from now?

Mr. EMISON. That the fastest that we could get this proposed is about the end of this year, the first of next year and it takes us 14 months between proposal and promulgation.

Mr. SYNAR. What good is that going to do us? I mean, really. What good is that going to do us then?

Mr. EMISON. When we get it out?

Mr. SYNAR. Well, I know then. But I mean what about all this period of time between now and then?

Mr. EMISON. We've got the present NESHAP to live with. And it's not a situation that we're very happy with. I would much rather have had that court decision come out 6 weeks later and maybe go back and look at the asbestos NESHAP after we had put it out than what we did. But the court decided and we had to go back and comply with their mandate and break the decision apart. And that is what we are doing.

Mr. SYNAR. So am I going to get a commitment that you speed it up before.

Mr. EMISON. I can't make it any faster Congressman. I have been back, and I have people who cringe when I walk in their office down in North Carolina right now on the asbestos NESHAP, on the coke oven NESHAP, and on the benzene coke byproducts. The ones we're putting out on Friday, because we've pressed them so hard to get these things out.

Mr. SYNAR. Let's go into another area. AHERA directed EPA to prepare a study on insurance for asbestos. That interim report was due April 1, 1988, and the final report in October 1990. You all have testified that that interim report will not be completed until September. Why is that interim report delayed?

Ms. VOGT. Primarily it's delayed because we had this.

Mr. SYNAR. I want to take that microphone.

Ms. VOGT. The same staff in many cases, were working on many of these asbestos-related activities, including other rulemaking that the Agency has underway. We have done a lot of the preliminary discussions, in fact we've had preliminary discussions with staff of this committee on that report. It's going through the final stages of Agency review right now and we expect to have it out by late summer.

Mr. SYNAR. I want to ask you.

Ms. VOGT. We do expect, Congressman, to meet the final deadline of 1990 for the final liability study. This is an interim report.

Mr. SYNAR. OK. Let me ask unanimous consent that an executive summary of the draft background document be entered in the record.

[The information follows:]

DRAFT BACKGROUND DOCUMENT FOR THE INTERIM AHERA SECTION 210 STUDY

Prepared by:
ICF Incorporated

For:
Office of Toxic Substances
Environmental Protection Agency

January 5, 1988

EXECUTIVE SUMMARY

INTRODUCTION

The Congress, in enacting Section 210 of the Asbestos Hazard Emergency Response Act of 1986 (AHERA), directed the Environmental Protection Agency to conduct a study of the availability of liability insurance and other forms of assurance against financial loss that are available to local educational agencies (LEAs) and asbestos contractors. The Congress also instructed that the study examine the causes and effects of any constraints in financial assurance on the efforts of LEAs to inspect for or abate their asbestos hazards as directed by AHERA. Specifically, AHERA requires that the study deal with the following issues:

> *§210 (a) (1)*
> *"(A) The extent to which liability insurance and other forms of assurance against financial loss are available to local educational agencies and asbestos contractors.*
>
> *"(B) The extent to which the cost of insurance or other forms of assurance against financial loss has increased and the extent to which coverage has become less complete.*
>
> *"(C) The extent to which any limitation in the availability of insurance or other forms of assurance against financial loss is the result of factors other than standards of liability in applicable law.*
>
> *"(D) The extent to which the existence of the regulations required by subsections (c) and (d) of section 203 and accreditation of contractors under section 206 has affected the availability or cost of insurance or other forms of assurance against financial loss.*
>
> *"(E) The extent to which any limitation on the availability of insurance or other forms of assurance against financial loss is inhibiting inspections for asbestos-containing material or the development or implementation of management plans.*
>
> *"(F) Identification of any other impediments to the timely completion of inspections or the development and implementation of management plans."*

This document, which is the background document to the Report to Congress ("the Report") provides presents an in depth review of up-to-date background information concerning the asbestos in schools problem, the asbestos abatement industry and the Federal regulations affecting it, liability concerns relating to asbestos in general, and financial assurance, both generically and specifically as they relate to asbestos hazard abatement. It also includes findings based on information that the EPA has collected to date during its study of the issues delineated in the Act.

STUDY DESIGN

The EPA divided the six issues enumerated above into three separate study topics, which included:

- Availability, costs, and coverage of liability insurance and other forms of assurance against financial loss that are available to LEAs and accredited asbestos abatement professionals (AAAPs) (§210(a)(1)(A),(B),(D));
- Effects of any constraints in financial assurance on the efforts of LEAs to inspect for or abate their asbestos hazards according to AHERA (§210(a)(1)(E),(F)); and
- Causes of limitations in availability of insurance or other forms of financial assurance (§210(a)(1)(C)).

During the course of the study, representatives of the following five groups were identified and interviewed so that they could be asked questions related to the study topics given above:

- LEAs;
- AAAPs;
- Professional and trade associations;
- Providers of financial assurance; and
- State agencies.

The Agency directed questions to each group of interviewees to solicit information appropriate to that group's perspective. Of course, individual responses do not always reflect those of the entire group being represented. To contend with this problem, the study team employed a stratified sampling protocol in selecting interviewees to ensure the broadest possible range of responses. That protocol enabled the Agency to note the views of as many different and significant subgroups as possible given the constraints of the study. Also, each interviewee was invited to express generalizations that would characterize broader views. Consequently, the study reflects individual opinions as well as collective judgments. The observations and data received enabled the Agency to formulate conclusions concerning the groups' perceptions relating to the study issues. Broad trends in the information received are apparent and are discussed in detail in the body of the document.

SUMMARY OF FINDINGS

AVAILABILITY, COSTS, AND COVERAGE OF FINANCIAL ASSURANCE

Availability

There are three distinct groups requiring insurance for asbestos-related liability. These are LEAs and the two categories of AAAPs, abatement contractors and asbestos consultants. This Executive Summary discusses the availability of insurance for each of these groups separately in the following sections.

Local Educational Agencies

There are many different insurance companies and brokers providing financial assurance for LEAs. Insurance providers interviewed believe that there is no underlying lack of availability of insurance for LEAs. Similarly, most LEAs interviewed indicated that they are in possession of commercial/comprehensive general liability (CGL) insurance policies. They believe that these policies provide sufficient protection for:

- General damage to real and personal property, including buildings, fixtures, and grounds, by asbestos or asbestos-containing materials (ACM);
- Expenses incurred in inspection and laboratory analysis;
- Expenses incurred for containment, removal, or replacement of asbestos or ACM;
- Rental expenses incurred from loss of use during such containment, removal, or replacement;
- Expenses of notifying affected persons; and
- Liability for asbestos-related bodily injury and other delayed manifestation claims; unless the policy specifically excludes asbestos-related property damage or bodily injury claims.

Some LEAs use other forms of assurance against financial loss such as insurance pools or requirements that AAAPs indemnify them for any damages or injury that might be caused as a result of asbestos abatement activity.

Only one interviewee specifically stated that his LEA was unable to obtain asbestos liability insurance. However, insurance companies are considering changes in their insurance practices to minimize their exposure to asbestos claims against LEAs. A group that may have difficulty obtaining liability insurance is LEAs that have not removed their asbestos. According to the school insurance broker interviewed, if LEAs do not have at least a plan for removing their asbestos, or preferably have already removed it, they may have severe difficulty in obtaining liability insurance. The reason for this stricter underwriting criterion is that insurers want some assurance that LEAs' asbestos problems have been or are being resolved, to protect against future claims.

Accredited Asbestos Abatement Professionals

Claims-made CGL coverage is the type of liability insurance most readily available to asbestos abatement contractors in managing their risk of financial loss resulting from potential third-party liability claims. Although no abatement contractors interviewed admitted to being completely unable to obtain a CGL policy covering asbestos-related claims, several of them reportedly experienced great difficulty in finding insurance carriers that offered them what they regarded as an acceptable policy. In addition, the "claims-made" coverage is widely regarded as limiting the contractors' ability to change insurers in order to obtain preferable policies. Once dropped, CGL policy coverage customarily no longer covers work completed under it, and "retroactive coverage" under a new policy is often prohibitively expensive. Only a very few of the relatively large asbestos contractors are able to obtain true "occurrence-based" CGL policies covering asbestos.

Abatement Contractors. According to interviews with the AAAP contractors:

- Most of the liability insurance policies generally available, both claims-made and occurrence-based, are considered to be virtually worthless and may not be relied upon to pay for future claims if claims are ever filed;
- Regardless of insurance policy availability, cost, or alleged coverage, contractors are often distrustful of their insurers;
- Concern exists as to whether all of the insurers offering coverage for potential claims related to asbestos are capitalized sufficiently to be able to provide any remuneration if claims are ever filed, or whether offshore carriers would remain in business to pay claims that may be awarded in the future;
- Policies being offered by small insurers are not deemed to be reliable and their amount of capital may never be sufficient to meet the needs of all the contractors to whom the insurers are issuing policies; and
- Insurers do not recognize that asbestos abatement activities are at least as safe as other construction activities given today's technology, if they are designed well and conducted and supervised competently.

The insurance representatives interviewed agreed that the financial assurance market conditions for AAAPs have been much tighter since the early 1980s and the Johns-Manville asbestos difficulties. Even though the asbestos claims at that time involved asbestos installation, rather than removal or abatement, these interviewees stated that the mere association of the activity with the word "asbestos" was sufficient to drive most major insurers from the market, thereby severely decreasing the availability of insurance to AAAPs. However, in response to this scarcity of financial assurance, new insurers -- particularly ones formed by the AAAPs themselves -- have entered the market since 1984. The combination of a better understanding of the true risks of the asbestos removal and abatement process, higher premiums, stricter underwriting criteria (i.e., customer qualifications), and more restrictive coverage has enabled these firms to remain in the market and has motivated new firms to enter the market. Major liability insurers may still avoid AAAPs, but smaller and newer insurers are making insurance available, and price and coverage competition is occurring among them. Thus, the insurance representatives believe that the current level of availability is a stage in an evolving market response to fears about asbestos liabilities that began several years ago, and the degree of availability may improve in the future.

The criteria under which providers qualify AAAPs for insurance may limit the availability of insurance for some abatement contractors. All of the providers of financial assurance for AAAPs stressed that they sought extensive information about applicants before accepting them as customers. Requirements used by insurers to determine whether an AAAP is acceptable as a client may include:

- Number and type of asbestos abatement activities undertaken;
- Level of training and experience of staff;
- Quality of management and technical qualifications of senior staff;
- Work procedures;
- Past regulatory violations;
- Record of lawsuits, including those threatened or pending;
- Claims history;
- Absolute absence of prior health or safety violations;
- Financial condition; and
- Other similar characteristics.

A minimum of $500,000 a year in asbestos abatement project revenues and/or a minimum number of years of experience in the field is often necessary. The AAAPs confirmed these underwriting criteria and added that if one company discontinues a firm's policy then it is very difficult to obtain insurance from another company. At least one contractor was concerned that a governmental citation or fine, no matter how minor, could cause his firm to lose insurance coverage in spite of a strong record of compliance.

Asbestos Consultants. Professional liability coverage for asbestos-related projects is generally unavailable for architects and engineers. Trade and professional association representatives indicated that such coverage has been unavailable since 1985. One design firm, however, was able to obtain a claims-made policy from an offshore company in 1984, and was recently able to obtain such a policy from a major U.S. carrier.

Only one of the insurers contacted presently makes such policies available, and another of them -- the major national supplier of insurance for architects and engineers for 30 years -- effectively left this market in 1986 by adding an exclusion to its professional liability policies for claims arising from asbestos. Thus, the availability of financial assurance for AAAPs may differ significantly depending upon the type of AAAP seeking coverage.

Summary

In summary, insurance of some sort is usually available to asbestos abatement contractors, especially if they have been in business for a number of years and have a good performance record. However, this is generally claims-made insurance and may be available only from offshore companies. Many of the interviewees, in particular the LEAs and AAAPs, expressed reservations about the merit of many of the policies available to abatement contractors and were concerned about how many of the insurance providers will be able to provide indemnification if claims are filed in the future. In addition, many consultants, especially architectural and engineering design firms, continue to be unable to obtain any professional liability coverage for their asbestos work.

Changes in Costs and Coverage

Local Educational Agencies

According to the LEA insurance broker interviewed, the cost of liability insurance for LEAs has undergone a series of dramatic changes in the last ten years. Compared to the historical normal cost of liability insurance for LEAs, the cost was somewhat high during the late 1970s. This cost decreased substantially between about 1979 and 1983, but then rose 200 to 300 percent in the mid-1980s. The cost of this insurance is reportedly now stable or decreasing slightly. According to the LEA insurers, these fluctuations were not tied to any factors exclusive to LEAs, but rather to the underlying turbulence experienced in the overall liability insurance market during this time period. In fact, the cost of insurance rose less for LEAs than for other major sectors of the insurance market at this time.

Completeness of coverage has not changed significantly, but companies are considering or starting to implement changes in their policies to reduce their potential exposure to asbestos-related claims.

Accredited Asbestos Abatement Professionals

Prior to the insurance industry's asbestos trauma in the early 1980s, the cost of insurance for AAAPs was not especially high. In fact, as one interviewee stated, at this early stage of the asbestos abatement industry, it is likely that much, if not most, asbestos abatement work was done by general contractors, who paid quite low premiums for liability insurance (one half percent to two percent of their payrolls), and did not inform their insurers of their asbestos projects. However, once insurers became aware of the potential liabilities of asbestos-related activities, those who did not withdraw from the market raised their premiums dramatically. Now, due to the entry into the market of new insurers in the last few years, the cost of insurance has been holding steady or, in some cases, decreasing substantially.

- Three of the insurance companies interviewed offered CGL policies for AAAPs' projects at a charge of ten to fifteen percent of the projects' revenues.
- One insurer offering insurance to architects and engineers involved in asbestos work is charging three to five percent of project revenues. However, this is for a liability policy solely covering the asbestos claims otherwise excluded from these professionals' normal errors and omissions policies.
- Another AAAP insurer is offering a similar policy -- covering only asbestos claims -- for asbestos contractors (not architects and engineers) at a cost of three to six percent of project revenues and a one time fee of $100,000.

Since the asbestos-related problems of the early 1980s, the coverage of asbestos-related policies has been reduced significantly. However, during the past two years the restrictions on policies have started to ease somewhat. Only one of the insurers interviewed offers an occurrence-based policy, with all of the others using claims-made arrangements. One of the insurers has recently introduced claim limits of $3,000,000 per occurrence and a $10,000,000 annual aggregate, but the other insurers reported limits of $1,000,000 per occurrence and a $1,000,000 annual aggregate for asbestos removal and abatement contractors. The one insurer interviewed who provides coverage to architects and engineers involved in asbestos projects offers a maximum of $500,000 per occurrence and a $500,000 annual aggregate. However, for architects and engineers, obtaining any type of insurance is still a major problem.

Effect of AHERA on Cost and Availability of Financial Assurance

At this point in the study the effects of AHERA can only be postulated, as the regulations have not been fully promulgated. Predictions of the interviewees are presented in this section. There was some difference in opinion about what the ultimate effects of AHERA would be. About half of the financial assurance providers said that the AHERA provisions would have no effect, whereas the other half stated that the cost and availability problems would be eased somewhat. The rationales given by the "no effect" advocates were varied. One AAAP insurer claimed that he would base decisions on the overall information supplied by applicants, not simply on a requirement for training. Another AAAP insurer stated that even AHERA requirements would not tempt back the traditional insurers who left the market in the early 1980s, because those firms still would not want to deal with any asbestos-related activities. The LEA insurance broker believes that AHERA will have no great effect because currently there is neither significant lack of availability nor excessive cost of insurance for LEAs. Those who expect AHERA to ameliorate the problems believe that accreditation requirements will drive out unqualified contractors and leave a pool of potential customers with lower risk, thus improving the availability and price of insurance.

The LEAs that are familiar with AHERA feel that the certification process will reduce the overall number of AAAPs and thus drive up costs because the industry will be less competitive. Some State agencies believe that AHERA will improve the costs and availability of insurance, if the regulations can be enforced effectively. Others believe that AHERA will have no effect because there will be inadequate funding to ensure enforcement. Similarly, the AAAPs were divided in their predictions of the effects of AHERA. One abatement contractor believes that AHERA could lead to an improvement in standards but misinterpretation of regulations by inexperienced enforcement people could lead to a decline in thoroughness. Another point raised was that, although the regulations are improving the availability of liability insurance, the improvements are coming too slowly for the asbestos consulting firms.

EFFECTS OF FINANCIAL ASSURANCE LIMITATIONS AND OTHER IMPEDIMENTS TO ASBESTOS ABATEMENT

Financial Assurance

The major effect of the lack of financial assurance availability on asbestos abatement appears to be the unavailability of insured architects and engineers to manage asbestos removal projects and provide necessary oversight and expertise. Two insurance providers ventured the opinion that the unavailability of liability insurance for the asbestos professionals who ordinarily would conduct inspections for asbestos may be deterring them from engaging in this work.

The professional and trade associations indicated that the lack of insurance for design professionals results in their unavailability for asbestos abatement projects in schools and thus the loss of a valuable source of expertise. AAAPs were divided in their assessment of whether the lack of insurance is an impediment to the asbestos abatement program for schools. Those who were unable to obtain, or had difficulty in obtaining, insurance felt that it was an important impediment; others who were able to obtain insurance felt that it was less important. There is no doubt, however, that the lack of financial assurance limits the number of qualified contractors. As the push for asbestos abatement increases, the number of available professionals may become a limiting factor.

Other Constraints

A number of impediments, other than the lack of financial assurance, were suggested by those contacted during this study. These are listed here and discussed more fully in Sections 5, 6, and 7.

- Shortage of staff for inspecting school buildings, or shortage of licensed or accredited abatement professionals;
- Stringent worker protection and training requirements for school abatement projects, including requirements for contractor accreditation;
- Requirements that contractors demonstrate proof of liability coverage before qualifying to abate asbestos in schools;
- Proposed required use of a transmission electron microscope (TEM) to sample the ambient interior concentration of asbestos;
- Inadequate funds/contract monies for abating asbestos in schools;
- Lack of reciprocity of contractor training and licensing across State programs;
- Large number of inadequate inspections completed in the past;
- Lack of centralized State program leadership;
- Apathy or ignorance of many LEAs, or lack of LEA sophistication;
- Litigation and ensuing adverse public opinion;
- Strict bidding or procurement requirements imposed by LEAs;
- Local unavailability of disposal facilities; and
- Availability and safety of replacement materials.

CAUSES OF FINANCIAL ASSURANCE LIMITATIONS

Each of the groups that ventured opinions on causes of financial assurance limitations cited standards of liability and the fear of asbestos related claims. This fear is based on the claims and awards in the early 1980s related to asbestos installation. Other potential causes suggested during the interviews are:

- Inability of insurance companies to calculate the risks of exposure to materials that cause disease only after long periods of latency.

- Failure of insurance companies to recognize the diminished risks from asbestos resulting from technological advancements, more rigorous performance standards, and increased guidance, training, and accreditation requirements;
- Recent insurance "crunch" that causes insurance companies to unload higher risks;
- Publicity associated with claims and awards resulting from exposure to asbestos during its manufacture and installation under conditions that were almost completely unregulated;
- Financial weakness of many asbestos abatement contractors; and
- Inadequacy of the proposed regulations and lack of funding for enforcement.

In addition to the interviews conducted with groups knowledgeable about the school asbestos abatement market, the Agency has addressed the essential causes of limitations in financial assurance availability through a literature survey. The survey, which investigated published information that has partially addressed the question of whether such factors may have caused limitations in financial assurance availability, is included in Section 7 of this document.

The conclusions drawn in many of the reports and articles reviewed suggest three general catagories of reasons for the insurance situation: (1) certain practices of the insurance industry, such as underpricing policies to gain market share and pulling out of the reinsurance market; (2) changes in tort laws, such as a shift from negligence to no-fault liability; and (3) other factors, such as legislation and regulation.

In order to determine the extent to which the types of factors identified above may be relevant to the limitations in financial assurance availability, it is necessary to study the causes of the variations in each of the factors. However, because a study of causes must focus on relationships that may be more subtle and complex than the other AHERA studies, the Agency has developed an additional study design for further research. The approach for this study involves the evaluation of hypothetical scenarios of conditions in the AAAP insurance market by insurers who are potential entrants into this market. By analyzing the insurers' responses to these scenarios, the Agency could determine what effects various factors, including standards of liability, have on insurers' willingness to enter this market and thereby increase the availability of insurance for AAAPs. Section 7 of this document discusses in detail a proposed study of the causes of the limitations in financial assurance availability.

Mr. **Synar**. And very frankly what this document suggests is that the available insurance may not be very useful. It shows, and let me read from it, that some local education agencies are finding that policies specifically exclude asbestos-related claims and some can't get liability insurance if they haven't removed their asbestos. And they also—it also shows that abatement contractors consider liability insurance policies to be virtually useless, and I cannot be relied upon to pay for future claims. Now it also states that insurers are offering claims made policies rather than occurrence based policies. Can you explain to me what a claims made policy is?

Dr. **Moore**. Congressman, in general, a claims made policy is a claim that is set forth, or presented to the insurer only during the period of time that the work is being done, or for a very finite period of time, maybe a little bit beyond that during which the insurance policy is still in effect.

Mr. **Synar**. So, some of these policies end at the time the actual abatement project is completed. And not after it. So with something like asbestos, Dr. Moore, where the manifestation of the diseases don't even show up from 15 to 40 years, those claims policies are virtually useless, aren't they?

Dr. **Moore**. I don't disagree with your choice of words.

Mr. **Synar**. I'd ask unanimous consent that page 5-10 of that interim report be included into the record.

[The information follows:]

FROM:
Draft Background Document for the Interim AHERA Section 210 Study,
January 5, 1988

firms. Two firms with occurrence-based policies used off-shore carriers, whereas the other was able to obtain an occurrence-based policy from a major U.S. based carrier.

Many interviewees cited different factors determining the availability of insurance for firms involved in asbestos contracting. For example, one contractor who has been active in abatement of asbestos hazards for three years commented that he believes that a response action contractor must have been in operation for at least two to three years in order to obtain any liability insurance covering asbestos claims. Another interviewee, a contractor who represented a firm with annual gross receipts in excess of $2,000,000, noted that the total annual value of abatement contracts can be the determining factor affecting the availability and cost of premiums for CGL policies to cover asbestos-related liabilities. In this interviewee's assessment, the greater the volume of business, the more available the insurance. Another AAAP whose contracting firm had changed policies during 1987 said that if one insurance company discontinues a firm's insurance policy, other insurance companies would also be reluctant to replace the firm's cancelled liability insurance policy for asbestos.

Another abatement contractor noted that insurance company underwriters typically pay close attention to governmental citations/fines. Any citation reportedly has an adverse affect on insurance availability regardless of how strong the company's record of compliance has been or how minor the infraction. At least one contractor reported being very concerned that minor technicalities could cause his firm to lose its coverage no matter how diligently his workers performed their tasks on dozens of contracts.

In the opinion of some of the AAAPs interviewed, the claims-made CGL insurance policies typical of those presently being offered to the majority of asbestos abatement contractors are simply "licenses to work." The point of view of many contractors is that much of the liability insurance available is little more than an additional cost of the contractors being able to remain active in the asbestos abatement industry. Some clients require proof of liability insurance coverage simply as a prerequisite for awarding work to a contractor. In this regard LEAs, as opposed to other types of clients, were characterized by many of the AAAPs as being especially concerned only with whether contractors and professional asbestos consultants able to provide abatement services for the lowest price can prove that they have obtained an active insurance policy that covers asbestos-related claims. Many building owners, especially LEAs, reportedly do not evaluate whether the policies of asbestos abatement contractors would ever provide any measure of financial assurance in the event of a claim. Some interviewed AAAPs commented that they have never been asked to show anything more than a certificate to prove that they have insurance.

The nature of the CGL policies being offered by insurers reportedly can affect the willingness of contractors to seek insurance coverage from other insurers. In one case an abatement contractor with close to three years of abatement experience expressed a feeling of being trapped into staying with his firm's existing claims-made policy. If dropped, this AAAP's policy would not cover the work previously done. This situation reportedly precludes this

Mr. **Synar**. And there's a paragraph here that bothers me. Let me read it to you if I could. "LEA's, as opposed to other types of clients, were characterized by many of the [accreditated asbestos abatement professionals] as being especially concerned only with whether contractors and professional asbestos consultants able to provide abatement services for the lowest price can prove that they have obtained an active insurance policy that covers asbestos-related claims. Many building owners, especially LEA's, reportedly do not evaluate whether the policies of asbestos abatement contracts would ever provide any measure of financial assurance in the event of the claim." Dr. Moore, it seems to me that these issues are important. And that we do need to know more about them in context with respect to the overall program. Is there something we could do to speed up this report?

Dr. **Moore**. It's for the interim or the final?

Mr. **Synar**. The interim.

Dr. **Moore**. The report in essence is written, I think, as I heard Susan comment. And it's just in the formal stages of being reviewed by the various offices within the Agency before it becomes public. Assuming that there are no major problems that are identified through that review process, it should be out in midsummer. That's not very far away, is what I'm leading up to. It's a matter we're now counting in weeks, not months.

Ms. **Vogt**. Short in the schedule.

Mr. **Synar**. That's what I'm trying to do with all of you. Mr. Emison, do you want to cut yours down now? And we'll give you one more shot. I'm giving you the leverage today to walk in that office tomorrow.

Mr. **Emison**. I have tried to make that schedule as tight as I can, and if I make it any tighter, I don't know that we're going to be able to meet it as it stands right now.

Mr. **Synar**. Let me ask one set of final questions here and I'll try to get you all out of here. You all have been very patient, but this is a very important area, and I think I want to try to get through as much as I can. I think we've learned something this morning about school districts, and that they do want to act in good faith. I think that was pretty clear from the testimony we had. And they want to comply with the law. But we've also heard about the costs that are included in this thing. And they are enormous. They just don't have the moneys out there in the school districts to do it. And I'm certain that somewhere out there there are local education agencies who will very frankly not make a good effort to comply. Or a good faith effort to comply. Let's assume for a moment, if we could, Dr. Moore, that your very tiny inspection force finds one of those, which would be a miracle in itself. But they find one of those LEA's that has not made a good faith effort to comply. Under AHERA, what penalties can you impose upon the local education agencies. Can you go through that for us?

Dr. **Moore**. Well. If it's the school district itself that is noncompliant, we could obviously cite them for anything ranging from just a notice of noncompliance with no penalty, to penalties that would be developed according to this penalty policy that's in draft review right now.

Mr. **Synar**. You can assess up to $5,000 per day for a violation. You can assess criminal penalties for knowingly willful violation. You can pursue injunctive relief for friable asbestos which "poses an imminent and substantial endangerment to human health or the environment", correct? Now is that amount of the civil penalty which you can assess under this new law actually lower than the old law?

Dr. **Moore**. Yes.

Mr. **Synar**. Now once a civil penalty is assessed, the AHERA law provides, let me see if I've got this correct, for further reductions based upon various factors. What are those?

Dr. **Moore**. Oh, it could be self-confessing. We've often found in some of our policies, our penalty policies, it could be demonstration of good faith effort, et cetera. Things of that sort.

Mr. **Synar**. You basically had the same flexibility under the old rule, did you not? And they included significance of violation, ability to pay, culpability of violator, impact on the ability to provide education service. Now, you can reduce the penalty up to 15 percent for good faith compliance. All right. I have a document here which is a printout of cases which appeared in region IV's new case tracking system. Now these school cases which appeared on this printout from 1987 and 1988, had fines overall reduced by, guess what, 95 percent? Now for those school districts which were penalized for violations under their old rule, the average penalty assessed was $19,420. And the fine actually agreed to was about $1,065. Now in light of this practice, based upon this, which we would call substantial reductions in penalty, and with the starting penalty now under the new law, lower than the old law, there's not really a lot of likelihood that these school districts are going to be zapped, are they?

Dr. **Moore**. Congressman, if I'm speculating correctly, what you just cited that out of where the region IV statistics as far as the reduction, is that we, the school district, as part of settlement, applied the money that we would have collected to the U.S. Treasury, to fixing the problem relating to asbestos. In essence, that practice, is what Congress put into AHERA in statute, when it was passed, 18 months ago.

Mr. **Synar**. I think the point is that the penalties, given this record now, that they're lower, is really not a deterrent, is it?

Dr. **Moore**. I don't think so. In some respects, because in essence, what you're going to end up doing is coming up with a penalty, a financial penalty, with the school district, and basically, the school district will retain the funds as long as they make the commitment to put them to the asbestos problem that they were cited for not doing to begin with.

Mr. **Synar**. All right. Let me ask you about EPA's policy on the use of publicity on enforcement activities. What is your policy?

Ms. **Vogt**. The policy under the old school's rule, the 1982 rule, was to issue a press release when a violation was found prior to settlement. And that, in fact, has been a very effective policy.

Mr. **Synar**. Let me quote it. See if this is correct. "It is the policy of EPA to use the publicity of enforcement activities as a key element of the agency's program to deter noncompliance of environmental laws and regulations." That's stating it correctly. I don't think there's any question. I've always said, this is an interesting topic here itself, I've always said there's three jobs I don't want in my lifetime. I don't want to be mayor of a small town. I don't want to be county commissioner. And absolutely, under no circumstances do I want to be on a school board anywhere in this country. You think I got it hot. You think they turn the heat up on me. If somebody in Ottawa County gets mad at me, I just don't go to Ottawa County for a little while until they calm down. If you're on the school board you don't have any choice. This is a heck of a tool, is it not? I mean, you turn the heat up on the publicity and you've got yourselves a mess. And as the school board people pointed out today, this may be the best deterrent you have, is that correct? You're shaking your heads. Are you all going to use this?

Ms. **Vogt**. We have always had regional discretion. Some regions use press releases, and some regions do not. So there is regional discretion as to whether or not they think it's effective within their region. We will probably continue a policy of allowing regions to use it when they feel that their particular area needs that nondeterrent effect.

Mr. **Synar**. OK. Let me—I ask unanimous consent that the press releases regarding enforcement actions contained in region IV, press release notebooks for 1987 and 1988 be included into the record.

[The information follows:]

PRESS ADVISORY FOR THE WEEK OF: AUGUST 10, 1987

EPA_ISSUES_ONE_OF_FIRST_ADMINISTRATIVE_ORDERS AGAINST_KENTUCKY_OIL_OPERATOR

In one of the first administrative orders issued by EPA under the amended Safe Drinking Water Act (SDWA), a Houston-based firm will pay the maximum administrative penalty, $125,000, for endangering underground drinking-water sources near the Martha oil field in northeastern Kentucky. Ashland Exploration Inc. used underground injection of brine (salt water) in the Martha field to bring up oil, but in the process threatened some drinking-water sources. The administrative order requires Ashland to plug (fill with cement) 1388 injection and production wells to prevent any further endangerment. Also, the order requires the company to monitor drinking-water wells on the oil field, and, if warranted, to provide alternative water supplies to affected homes. Ashland must also monitor three area aquifers to evaluate any change in ground-water quality. The company also has volunteered to clean up surface areas affected by oil production and injection activities. The administrative order is an enforcement tool unavailable to EPA prior to the 1986 Amendments to the SDWA. Prior to the amendments, EPA had to go through the courts to assess a civil penalty against a company. Now, with administrative orders, EPA can penalize a company directly. The proposed order is subject to public comment and may be changed.

Dave Ryan
202-382-2981

PCB_ELECTRICAL-TRANSFORMER_AMENDMENTS_PROPOSED

EPA proposed amendments on Aug. 13 to the polychlorinated biphenyls (PCBs) transformer fire rule of July 17, 1985, which required measures to reduce and eliminate the fire-related risks posed by the use of electrical transformers containing 500 parts per million or greater of PCBs. With the new amendments, the agency is proposing to allow the installation of PCB transformers in emergency situations, the installation of retrofilled PCB transformers for purposes of reclassification and

Alicia Tenuta
202-382-4355

(more)

Mail Id: IPM-163-870831-114890531

the following press release is being issued today out of regions 3 & 5 and headquarters.

From: J.GRAND (EPA9512) Delivered: Mon 31-Aug-87 11:39 EDT Sys 163
To: D.COHEN (EPA1704)
Subject: BETHLEHEM PRESS RELEASE 87-188
Mail Id: IPM-163-870831-104980508

Region 5 Media Contact: Don deBlasio
(312) 886-4360

Region 3 Media Contact: Lee Blackburn
(215) 597-9904

For Immediate Release: August 31, 1987

No. 87-188

EPA FILES LAWSUIT AGAINST BETHLEHEM STEEL

The U.S. Environmental Protection Agency (EPA) today filed a lawsuit against Bethlehem Steel Corp. for violations of the Clean Air Act (CAA). The lawsuit was filed by the U.S. Attorney's office for the Eastern District of Pennsylvania in the Federal District Court at Philadelphia.

The civil lawsuit alleges violations at three plants: Burns Harbor, IN, in Region 5 and Bethlehem and Johnstown, PA, in Region 3. The complaint charges Bethlehem Steel with exceeding emission standards and limitations for particulate matter and sulfur dioxides.

The lawsuit alleges the company was responsible for excess emissions at two coke oven batteries at Burns Harbor; two electric arc furnaces at Johnstown; and two blast furnaces, four coke oven batteries, a high pressure boiler, and other operations fueled by coke oven byproduct gas at the Bethlehem plant.

EPA is seeking a judgment of liability, assessment of penalties, and an injunction requiring CAA compliance through improvements to the plants' emission control equipment, practices, and techniques.

The CAA provides for penalties of up to $25,000 a day. The EPA alleges violations began as early as March 1982 at the Johnstown plant and as early as January 1984 at the Bethlehem and Burns Harbor plants.

# # #

From: D.COHEN (EPA1704) Delivered: Thu 28-Jan-88 11:46 EST Sys 163 (215)
Subject: press release on enforcement statistics 1/28/88
Mail Id: IPM-163-880128-105921047

Press Release (12/21/87)

FOR RELEASE: THURSDAY, JANUARY 28, 1988

Robin Woods (202) 382-4377

EPA RELEASES ENFORCEMENT STATISTICS

The U.S. Environmental Protection Agency referred the second highest number of enforcement cases in its history to the U.S. Department of Justice and set an all-time record for the amount of civil penalties assessed in fiscal year 1987. In addition, state agencies last year developed and referred their highest number of cases to state courts and maintained strong administrative enforcement programs.

EPA also expanded its administrative penalty and contractor listing programs while maintaining and resolving a large civil and criminal judicial case docket.

State environmental agencies, which now enforce most of the federal environmental laws under authority delegated by EPA, referred 723 cases to state attorneys general for prosecution under state law, compared with 408 in the previous year. In addition, states took a total of 3,183 administrative enforcement actions under the air, water and hazardous-waste laws, compared with 4,106 in 1986.

EPA referred 304 civil and 41 criminal cases to the Justice Department, compared with 342 and 41 in those categories in 1986. The Justice Department filed 285 EPA civil cases in 1987, compared with 260 cases last year. At the end of 1987, EPA had 387 active civil judicial orders and consent decrees, compared with 322 in 1986 and 282 in 1985.

(more)

EPA issued 3,194 administrative orders in 1987 compared with 2,626 in 1986 and 2,609 in 1985. The largest increase in administrative orders-- from 781 in 1986 to 1,051 in 1987 -- occurred under the Toxic Substances Control Act, primarily in the PCB and asbestos programs.

EPA established a new all-time record for the largest amount of civil penalties imposed in a year, based on a preliminary analysis. The agency imposed over $24 million in penalties in 1987 compared with $20.9 million in 1986, and $22.9 million in 1985. The penalties imposed in these three years account for 60 percent of all of EPA's penalties imposed since 1974. EPA program offices generally have increased their use of penalties and the size of typical penalties under both judicial and administrative authorities.

Thomas L. Adams, Jr., EPA's Assistant Administrator for Enforcement and Compliance Monitoring, said, "The record for 1987 reflects a strong commitment by EPA and the Department of Justice to ensure compliance with our environmental standards. The statistics also indicate that the states are equally committed to taking appropriate enforcement action.

"The higher admininistrative figures reflect a commitment by the agency to use more aggressively the administrative enforcement powers Congress has provided under most of the environmental laws. At the same time, we will continue our strong use of the federal courts when injunctive relief, court-imposed sanctions or criminal prosecution is the appropriate response to a violation."

EPA's criminal enforcement program has referred 82 cases for criminal prosecution over the past two years. In 1987, 58 defendants were convicted or entered guilty pleas, compared with 66 in 1986 and 40 in 1985. During 1987, federal judges imposed fines totalling $3.6 million and prison terms of 84 years against individuals convicted of violations of federal environmental laws.

EPA also is increasing its use of the contractor listing sanctions under the Clean Air and Clean Water Acts. As of Sept. 30, 12 facilities were on EPA's "List of Violating Facilities." EPA may place facilities on the list when their owners or operators have been convicted of criminal violations of the clean air and clean water laws (or which have had continuous or recurring violations of those laws). Listed facilities are barred from receiving future contracts, grants, loans or any other form of assistance from any branch of the federal government. A facility remains on the list until it demonstrates that it has corrected the condition that gave rise to the listing.

Federal enforcement activities also included an expansion of the direct referral program with the Justice Department, which allows EPA regions to refer civil cases directly to Justice with simultaneous EPA headquarters review. Of the above 304 cases referred to Justice in 1987, 141 were direct referrals, compared with 90 of 342 cases referred directly in 1986.

Adams noted, "During 1988 we will be pursuing an active docket of 820 civil judicial cases and conducting agressive criminal enforcement and contractor listing programs. We also will expand the administrative enforcement programs, particularly under the new statutory authorities given to EPA under the reauthorized Clean Water and Safe Drinking Water Acts."

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# # #

Press Release - FY 1987 (Observation Trends)

OBSERVATIONS_IN_TRENDS_IN_MEDIA_ENFORCEMENT_PROGRAMS

CLEAN_AIR_ACT

EPA has maintained a strong Federal enforcement program directed at violations of State Implementation Plan requirements (SIPs), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs). The Agency has also increased its emphasis in the last year on enforcement of Prevention of Significant Deterioration (PSD) and non-attainment new source review (NSR) requirements.

The initiation of stationary source civil cases was down slightly from the record levels of FY 1986. The decline of about 15% may be attributable to some extent to an adverse court decision affecting enforcement of SIPs where SIP revisions are pending.

Based on initial penalty data which is currently being assembled, the median Stationary Air judicial penalty increased 65% from FY 1986 to $62,000 in FY 1987. The percentage of Air cases which involved a penalty was maintained at 96% in FY 1986 and 1987.

The Mobile Source program has achieved significant increases in penalty sizes in FY 1986 and 1987. The program doubled its yearly penalty total from $2.3 million in FY 1986 to $4.6 in FY 1987, largely due to larger sizes of penalties. The average penalty increased from $5,500 to $13,100.

CLEAN_WATER_ACT_-_NPDES

The decrease in the referral of Clean Water Act cases to the Department of Justice from FY 1986 to FY 1987 reflects a decrease in pretreatment referrals against industrial users (four in FY 1987 and 29 in FY 1986). The Agency continued its emphasis on municipalities that need construction to meet the July 1988 deadline. To support this effort EPA had 33 referrals in FY 1987 compared with 23 in the previous year. Administrative orders issued by EPA remained essentially the same as last year.

Judicial penalties continued to increase in FY 1987; based on initial figures, the total amount of penalties imposed in 1987 was nearly $6.8 million, up 30% from the FY 1986 total of $5.2 million. The median penalty for all cases also increased from $37,500 in FY 1986 to over $50,000 in FY 1987.

With the new CWA amendments EPA was given the authority to administratively assess penalties against violations of water pollution requirements. In some circumstances, an administrative order with penalties may be a more appropriate enforcement tool than a civil referral. The Regions will be using this new enforcement tool in place of the traditional civil referral to address many kinds of violations in the future.

In addition, the Regions have been providing additional legal and technical support to a growing on-going case docket. Supporting on-going litigation has required resources to be redirected from development of new cases.

SAFE_DRINKING_WATER_ACT

EPA's Safe Drinking Water program was given a new enforcement tool this year -- authority under the Safe Drinking Water Act to issue administrative orders, with penalties if appropriate, rather than having to work solely through the courts. Under the amended SDWA, EPA proposed 123 and issued 61 final administrative orders for the Public Water System program. The Underground Injection Control program proposed 89 administrative orders and issued 18 final orders in FY 1987. Because of its use of the new administrative authority, the SDWA program referred seven cases in FY 87, compared with 11 cases in FY 86.

RESOURCE_CONSERVATION_AND_RECOVERY_ACT

Fiscal Year 1987 also marked continued prosecution of the many civil judicial cases filed last year as part of the "Loss of Interim Status" initiative.

The Hazardous and Solid Waste Amendments of 1984 required, among other things, that land disposal facilities for which owners and operators did not (1) certify compliance with groundwater monitoring and financial responsibility requirements and (2) submit a final (Part B) permit application would lose interim status on November 8, 1985. This loss of interim status (LOIS) provision requires that all noncomplying land disposal facilities be closed.

The Agency's response to the LOIS violations that are potentially the most harmful to the environment -- the continued operation of facilities lacking adequate groundwater monitoring, insurance or closure resources -- has been comprehensive. Enforcement actions have been taken to address 97% of these violations, and the prosecution of these actions remained a high priority for the Agency in 1987.

Under RCRA, the agency referred 23 judicial cases to DOJ in FY 1987, compared to 43 cases referred in FY 1986. The large majority of the cases referred last year, FY 1986, were part of the one-time LOIS initiative. The 1987 numbers reflect the changing nature of the LOIS initiative from referral of cases to litigation and settlement of these cases. Seven of these filed cases have been settled.

At this time, EPA does not anticipate that many additional LOIS violations will be discovered. The focus of EPA's effort with regard to LOIS in FY 1988 will be to continue litigating the LOIS cases which have been filed, and to monitor the closure of all the facilities that were required to close.

EPA took 243 administrative actions in FY 1987, compared with 235 actions in FY 1986. According to initial calculations, the RCRA program maintained its high level of administrative penalties, and increased the numbers of very large cases.

In addition, RCRA increased its percentage of cases with a penalty to 88% in FY 1986 and 89% in FY 1987.

. Press Release - FY 1987 Referral Beans

Judicial_Cases_Filed_in_Court,_FY_1981_Through_FY_1987

	1981	1982	1983	1984	1985	1986	1987
ationary	56	29	77	55	66	82	74
	30	11	56	81	60	103	68
	2	3	20	6	9	5	12
	13	2	2	9	6	23	43
	6	5	30	31	32	30	54
	0	0	4	5	7	4	8
	0	0	2	5	8	6	7
bile Sources	8	1	13	17	24	6	19
TOTALS	115	51	204	209	212	260	285

Active_Judicial_Cases

On September 30, 1987, the OECM automated Docket system reported that there were 820 civil judicial cases active as of that date. The following breakdown shows where the cases were in the enforcement process on that date.

- Cases pending at EPA Headquarters	-	62
- Cases pending at DOJ/U.S. Attorney	-	183
- Cases pending at Court	-	530
- Cases pending at EPA Region	-	45
Total		820

. STATE ENFORCEMENT BEANS

STATE_ENFORCEMENT_ACTIVITY_SUMMARY
PROGRAM TOTALS
FY 1985 TO FY 1987

	ADMINISTRATIVE ORDERS			CIVIL REFERRALS		
PROGRAM	1985	1986	1987	1985	1986	1987
AIR*	448	760	907	182	162	351
WATER	2,936	2,827	1,663	137	221	286
RCRA	459	519	613	82	25	86
TOTALS	3,843	4,106	3,183	401	408	723

*Air data is lagged one quarter and reflects 4th Qtr of first year through 3rd Qtr of next year.

(OCAPO 12/02/87)

1980-1987 ao/cr REVISED CHARTS FOR PRESS RELEASE 11/14/88

EPA ENFORCEMENT ACTIVITY
CIVIL CASES REFERRED BY EPA TO DOJ
FY 1980 THROUGH FY 1987

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
Air - Stationary	80	52	31	60	66	86
Water - NPDES	56	37	45	56	95	88
Safe Drinking Water	*	*	*	*	*	5
RCRA	53	14	29	33	60	13
Superfund	**	**	**	**	**	35
TSCA	1	1	2	7	14	8
FIFRA	***	***	***	***	***	11
Air - Mobile Sources	20	14	5	9	16	30
Total	210	118	112	165	251	276

* NPDES and SDWA cases combined
** RCRA and Superfund cases combined
*** FIFRA and TSCA cases combined

(CAPO 1/15/88)

EPA ENFORCEMENT ACTIVITY
ADMINISTRATIVE ORDERS
FY 1980 THROUGH FY 1987

	FY_1980	FY_1981	FY_1982	FY_1983	FY_1984	FY_1985	FY_1986	FY_1987
Air - Stationary	86	112	21	41	141	122	143	191
Water - NPDES	569	562	329	781	1644	1028	990	1002
Safe Drinking Water	*	*	*	*	0	3	0	212
RCRA	-	159	237	436	554	327	235	243
Superfund	-	-	-	-	137	160	139	135
TSCA	70	120	101	294	376	733	781	1051
FIFRA	176	154	176	296	272	236	338	360
Total	901	1107	864	1848	3124	2609	2626	3194

*NPDES and SDWA orders combined

(CAPO 1/15/88)

Mr. Synar. Now as you will see, the only references to the asbestos enforcement, and/or school enforcement cases, is in the aggregate statistics, right there. Now EPA is still developing its compliance monitoring strategy for AHERA, and I understand that there are other policies that must be developed relating to enforcement of the statute. What I'm asking you today, and what I want to get a commitment out of you, Dr. Moore, is will you seriously look at this question and come up with an enforcement policy that makes these school districts realize that if they don't make a good-faith effort to come into compliance with the act, what they will lose? And that you will look at publicity doled out evenhandedly. And that's the key deal here. Evenhandedly, whether you live in Oklahoma or California or Hawaii or wherever. Evenhandedly in the sense of whether it's Democratic- or Republican-controlled school board. As a way to help us get into compliance given, as your own admission, civil penalties are not a deterrent. Can I get your commitment of that?

Dr. Moore. Yes sir.

Mr. Synar. OK. I think that's about it. Let me first of all thank all of you with EPA here today. I think you've done an excellent job and again, Dr. Moore, I appreciate the fact that you got your testimony in early. We've heard today about problems in the implementation of the asbestos in school law and the standard of regulating emissions into the air of hazardous air pollutants for asbestos. The failure to quickly resolve these problems will have serious health implications. The effective dates of the school law, as all of us learned this morning, are coming right upon us. And we're asking schools to shoulder an important responsibility which affects, as I said in my opening statement, the most tender group in our society, our children. The resources to help them are limited. There are serious questions about whether our schools are getting the quality work they need, and whether our States are equipped to even carry out this role.

I think it's important that EPA step back from the immediate demands of everyday life and think about whether or not it has done all it can to make this law work. If not, this is the time to make adjustments. Not somewhere down the road 4 or 5 years from now. And let Congress know, right now, if we've got to come in and make adjustments, to help you do this. I think that's really where we're at, with 5 months to go, with so much at stake, you all have got to tell us what we've got to do to make this thing work.

If you don't, we're going to be back here in 2 years looking at failure upon failure upon failure and I don't want to do that. So, let us make a commitment, let me make that commitment, that if you can help us do this, we can make this program work. It is too critical, it is too important, and there are too many people that are affected by this. And I hope that we will all work together in that effort. And with that, this subcommittee is adjourned.

[Whereupon, at 12:41 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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